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A C H A R G E

DELIVERED TO THE
*CLERGY OF THE ARCHDEACONRY
OF MAIDSTONE*

At the Ordinary Visitation

IN MAY, MDCCCLXXXI

WITH NOTES

BY
BENJAMIN HARRISON, M.A.

ARCHDEACON OF MAIDSTONE

RIVINGTONS
WATERLOO PLACE, LONDON

CANTERBURY: A. GINDER, ST. GEORGE'S HALL; HAL DRURY, MERCERY LANE
MAIDSTONE: F. BUNYARD

MDCCCLXXXI

TO THE REVEREND THE
RURAL DEANS AND THE CLERGY
OF THE
ARCHDEACONRY OF MAIDSTONE,
AND TO
THE CHURCHWARDENS AND SIDESMEN,
This Charge,

PUBLISHED IN
WILLING COMPLIANCE WITH WISHES KINDLY EXPRESSED FOR THE
OPPORTUNITY OF A MORE LEISURELY CONSIDERATION
OF ITS CONTENTS,
IS
RESPECTFULLY AND AFFECTIONATELY

Inscribed.

PRECINCTS, CANTERBURY,
MAY XXIII. MDCCCLXXXI.

A CHARGE

MY REVEREND BRETHREN,

We are assembled again, by God's good providence, for the business of the Ordinary Visitation; and I gladly avail myself of the opportunity, in conformity with established custom, of holding some discourse with you on matters connected with the Church's work in our appointed portion of the vineyard, or in regard to questions affecting the interests of the Church generally, so far as they fall within the scope of the Archdeacon's office.

Last year, being the year of the Quadriennial Visitation of the Archbishop, the Clergy were, as usual, not cited to any Visitation of the Archdeacon; but, in accordance with the arrangement which has been in force ever since the Primary Visitation of Archbishop Sumner, now more than thirty years ago, Visitations were held in each Archdeaconry, to receive the presentments of the Churchwardens, and to release them from their office, by admitting their successors, who had been elected at the Easter Vestries. I refer to this arrangement

at the present time, because the postponement, which is customary, of the Ordinary Visitation in the years in which a Diocesan visits in person, the autumn being generally a more convenient time for the Bishops, has been made an argument in favour of a Bill lately brought—or rather, I should say, brought again—into the House of Commons, having for its professed object to afford facilities for the admission of Churchwardens to their office. The Committee “on matters Parliamentary” of the Lower House of the Convocation of this Province, in the fulfilment of the duty which devolves upon them, with each opening Session, of reporting Bills affecting the Church which have been brought into Parliament, having examined the provisions of this Bill, among others, recommended to the House that their Lordships of the Upper House should be requested to oppose the Bill, if it came before the House of Lords. This recommendation the Lower House unanimously adopted; and when the subject was before the Upper House, his Grace the President, to satisfy doubts which were entertained by one or two of his brethren, requested the Prolocutor to inform their Lordships of the grounds on which the Lower House pressed opposition to the Bill. The Lower House, with this reference made to them, after a brief consultation, represented to their Lordships as follows—and I am

anxious to call attention to it here, because of its important bearing, as will be seen, on these gatherings of ours for the yearly Visitation.

“Mr. Monk’s Bill,” the Lower House observed, “allows any Churchwarden to be admitted to his office by the Incumbent or the Rural Dean, without attending the Archdeacon’s Visitation. This,” said the Lower House, “will obviously tend to Churchwardens not attending the Visitation; though the Bill, no doubt, declares that nothing contained in the Bill is to interfere with such attendance.” They added—what I presume will be regarded as equally clear—that “precisely the Churchwardens whose attendance is most important—Churchwardens of outlying parishes, or places in which matters need looking after—will be absent.” “The object of the Bill,” the Lower House went on to observe, “is expressly to facilitate the admission of Churchwardens;” and, no doubt, one object in view was “to avoid Visitation fees. But,” as the Lower House proceeded to say, “there is no need of such facilities; inasmuch as any Churchwarden, who cannot conveniently attend the Visitation, can,” as you well know, “go before the neighbouring Surrogate, or appear at the Registry,” at Canterbury or in Doctors’ Commons. It was added further—as I have before now taken occasion to state—that the Visitation fees are not fees for the admission of

the new Churchwardens, but the payment due for the maintenance of the Diocesan Registry," and the remuneration of its legal officers for duty done in behalf of each parish; "payable by the late Churchwardens, together with other charges for repair of churches and supply of things required for Divine Worship." With all such payments the incoming Churchwarden, I may add, has nothing to do: he is not supposed to know anything of the parish accounts, of the church expenses, or the means of discharging them.

In the default of the alleged reasons for the proposed legislation, you will be of opinion, I doubt not, my Reverend Brethren, and our Lay Brethren with you, that the Lower House were fully warranted in giving it as their judgment, that "Mr. Monk's Bill, if it became law, would infallibly impair," if it did not, in the result, altogether "put an end to, the gathering of Churchwardens, with Clergy, at the annual Visitations; which," I am sure you will agree with the Lower House, "are very advantageous in every point of view." It was felt, moreover, that, in the place of the personal promise made by the individual Churchwarden to the Ordinary, whose officer he is, he would seem, when admitted by the Incumbent—which would be the general case—"rather to be the officer of the person who admits him than of the Ordinary;"

and would be less free to do his duty, if such painful necessity arose, of making presentment of anything faulty in which the Incumbent was himself, in any degree, involved. The legislation proposed would, therefore, as it seemed to the Lower House, "introduce a great change," which might "seriously affect the relations between the Archdeacon and the Churchwardens, as well in the care of the churches as in matters of discipline."

In regard, indeed, to these Visitations generally, I shall be expressing, I believe, my Reverend Brethren, the feeling of you all, when I say that we should greatly regret to lose the advantage and the pleasure, which we have in an increased degree, of late years, enjoyed in the more free communication and intercourse with our Lay Brethren which these our gatherings at the Visitation have afforded; to the strengthening of the bonds of brotherly relation to each other, to a fuller realization of our being, in our several detachments and posts of individual duty, companions and fellow-soldiers in one spiritual host, "the whole state of Christ's Church militant here in earth." The communications to which I have referred, as having passed between the two Houses of the Convocation of this Province, took place at a late hour on the last day of the group of sessions held in February. There has, therefore, been no opportunity of dealing with

the subject further on the part of the Upper House. I have reason, however, to believe that their Lordships, as a body, would be not less desirous than their brethren of the second Order, that every existing link of association and union between the Clergy and the Laity should be strengthened rather than impaired; and that, to this end, the arrangements at present in force in these Visitations, for the exercise of whatever remains of discipline still in the hands of the subordinate and concurrent Ordinary, with the efficient aid of the constitutional representatives of the Church Laity—the Churchwardens of the several parishes—should, by all the means in our power, be cherished and improved.

With the Churchwardens and Sidesmen alone, called together, as before stated, last year, I freely availed myself of the opportunity of addressing them on matters which specially belong to their office, or which concerned the Laity as deeply as the Clergy, and even more so; amidst circumstances of more than ordinary uncertainty and anxiety; which, nevertheless, by reason of that very uncertainty in regard to the issues of things then pending, left the course of thought which opened itself before the minds of Churchmen and patriots at that time more than usually free from questions of merely secular policy. The gravity of the coming conflicts of opinion

in regard to morals and religion, as they loomed in the doubtful future, cannot be said to have become less momentous or less anxious in the developments of the year that has now passed over us: for this, I think, will be felt and admitted in the religious depths of men's hearts, whatever may be the inclinations of their minds in matters of political opinion. Happy if, amidst all the elemental war, and far above its utmost range, their thoughts find rest, and their inmost spirits take courage, with calmness and holy confidence, in the view of HIM, and of HIS everlasting throne, "whose never-failing providence ordereth all things both in heaven and earth;"¹ "the high and lofty One that inhabiteth eternity, whose name is Holy;"² and to whose heavenly abode the prayer of humble faith will assuredly find its way, through the thickest mist and the darkest sky, that He will mercifully grant, when we earnestly beseech Him, "that the course of this world may be so peaceably ordered by" His "governance, that" His "Church may joyfully serve" Him "in all godly quietness; through Jesus Christ our Lord."³

I pass on, however, to a more welcome topic, when I proceed to fulfil the accustomed duty—

¹ Collect for the Eighth Sunday after Trinity.

² Isa. lvii. 15.

³ Collect for the Fifth Sunday after Trinity. See Note A.

or, I may rather say, to enjoy the accustomed privilege—of reporting to you, in a brief summary, the works lately completed, or now in hand, of Church restoration and improvement, or new fabrics built; for the extension of the means of grace where it is needed, and the more fitting celebration of God's worship and service. When I held my Visitation of the Churchwardens last spring, I had to report that I had just before, in Easter week, been invited to re-open, with a religious service, the restored church of Bromfield, in the deanery of Sutton, the sister parish to Leeds; a work which might be regarded as happily carrying on that which had been taken in hand in the restoration of Leeds Church, while it offered an affectionate memorial of him¹ who had himself desired to accomplish the work, and whose sudden removal from among us demanded a tribute to his memory among the losses which we had lately sustained, when last we met, of highly esteemed and valued members of our own brotherhood and of the body of Churchwardens.

Shortly after, in the early part of May, the Archbishop consecrated St. John's, Bromley; a new church, taking the place, as has so often been our experience of late, of an iron church close by, which had for eight years past been used as a temporary place of worship. The new

¹ Philip Wykeham Martin, Esq., M.P., of Leeds Castle.

church, supplying the spiritual wants of a rapidly increasing neighbourhood, was built by voluntary subscriptions, aided by the Church Building Societies, the Diocesan and the Incorporated; and had many liberal gifts bestowed on its fitting up and furnishing. Early in the following month, of June, his Grace consecrated the church of St. Mary, Kippington; a building on which no cost had been spared by individual liberality, and which, from the beauty of the country in which it is placed, cannot fail to become the centre of numerous dwellings. A few days after, a commemoration was held, in which the Archbishop took part, at Cranbrook, on occasion of the completion, for the present, of the works which, for a considerable number of years, had been in hand, as means were forthcoming, for the restoration of the noble and spacious parish church which has been called "the Cathedral of the Weald;" a work involving an outlay of nearly 7000*l*. In the course of the same month of June took place the consecration, by the Archbishop, of the new church of Lamorbey; in place of what was described as "the old church," of which, however, I may perhaps fitly record that I was in attendance at the consecration, in 1840. But the growth of the population made a larger church necessary; and the stained glass windows and other adornings of the new fabric, the offerings of divers

parishioners, bore witness to their sense of the spiritual benefit to be now conferred on the place. In the month of July, I had the pleasure of attending on a somewhat different, but not less satisfactory occasion—the substantial repair and internal improvement of the ancient village church of Wormshill; a long-neglected fabric in a secluded parish, which formed, for many years, an exception, in that part of the country, to the general work of Church restoration which had been going on around. The authorities of Christ's Hospital were present at the reopening, the Governors having contributed 500*l.* to the work; including the repair of a north chancel, now given over to the parish, and fitted up with seats.

More recently, in the present year, in the month of February, the new church of Halstead was consecrated by the Archbishop; superseding the old parish church, which was not conveniently situated for the parish generally, and which, amidst tasteless alterations of the last century or earlier, had lost every ancient feature of interest. The new church, incorporating, as a chancel, what was built some years ago for a cemetery chapel, has been the gift, almost entirely, to the parish, of the chief landholder, the owner of Halstead Place. Still more recently, the Archbishop consecrated anew St. James's Church, Croydon; enlarged and greatly

improved by the addition of what has been described to me as "a really good chancel," erected at the cost of between 2000*l.* and 3000*l.* And only on the afternoon of Saturday last, the 7th of May,¹ his Grace, just returned from the Continent, consecrated St. Mary's, Plaistow, a district church in the parish of Bromley; a chancel, organ chamber, and vestries having been added to a church which was erected for the supply of the religious wants of a parish rapidly extending in all directions, and with a large population, in this part of the parish, consisting of working men. I may mention also, that the church of Knockholt has been enlarged by the addition of a north aisle; obtaining thereby, and by a re-arrangement of seats, a considerable increase of accommodation. Keston Church has likewise been enlarged westwards, and a new open-timbered roof been put into the nave, with a new vestry and other adornings and improvements. At Maidstone, St. Peter's Church has been greatly improved in its internal arrangements, and has had, moreover, some interesting features of its early days, as the old Pilgrims' Chapel, brought to light.

In addition to these undertakings, in regard to our ancient parish churches, or new churches erected to supplement them, I have to report instances of what is at the present time engaging

¹ The Visitation began on Monday, May 9.

a good deal of attention on the part, specially, of the Incorporated Church Building Society—I mean the planting of iron churches, or school chapels, in the outlying parts of our large rural parishes—an object scarcely less important than that of supplying, by these and other means, the spiritual wants of our large towns. In the parish of Chiddingstone, the schoolroom at the Hoath, placed in the southern part of a parish of wide extent, and which was enlarged a few years since to enable the Clergy to hold Divine Service on Sundays and other days, has been further fitted with an Altar, and licensed for the celebration of the Sacraments. In the parish of Dartford, a new mission church, capable of seating 200 persons, has been built on the East Hill. The site was given by a lady, who also presented the Altar cloth; and two stained windows have been placed at the west end of the chapel, the gift of a justice of the peace. To the parish of Christ Church, Erith, was transferred, last spring, by Order in Council, a portion of the parish of Crayford, with a population of about 800. Since the transfer, the Primitive Methodists have sold their chapel, the only one in the district, to the Vicar and Churchwardens of Christ Church; it has been put into thorough repair, and Mission Services, Sunday Schools, and Mothers' Meetings are now held in it. At Southborough, St. Peter's, a new mission-room has been erected in the out-

lying hamlet of High Brooms; in which an Infants' School and Mission Services will be carried on. The room will hold about 150 persons.

I have spoken, thus far, of works brought to completion in the course of the last year. But I have the satisfaction of reporting others nearly completed or already in hand. The re-opening of the ancient and very interesting church of Minster-in-Sheppey, the mother church of the island, is fixed by the Archbishop for the 9th of June; and the Vicar of Queenborough will then feel himself at liberty to go forward with his appeal for the repair and restoration of the church of that once famous, long-decayed, and now somewhat reviving borough. When this work is accomplished, the renovation of the ecclesiastical fabrics of the Isle of Sheppey throughout will be well-nigh complete. The entire rebuilding of Shipbourne Church, replacing a fabric which, though dating only from the early part of the last century, was found incapable of repair, will soon be ready for consecration; a liberal gift to the parish from the owner of the estate of Fairlawn. And we shall also soon see finished and consecrated the permanent church at Four Elms, which, with its duly appointed minister and a small endowment, has been, as in other cases to which I have referred, the result of a temporary iron church, licensed and opened

some time ago, and supplying, as had been long desired, the spiritual wants of outlying portions of three adjoining parishes of Hever, Brasted, and Chiddingstone. At Croydon, the church of St. Michael and All Angels will, it is hoped, be opened at Michaelmas; including the nave, as well as the chancel and transepts, which alone, according to the original design, were to be first taken in hand. At Selhurst, in the same parish, the church, as originally intended, is approaching near to completion: a north aisle, with a west narthex has been added, with other improvements; leaving the tower and spire, part of the original design, still to be carried out. St. Saviour's Church, Croydon, is about to be enlarged; and a considerable sum has been collected for a new church to be built on the Brighton Road. A school chapel and mission-room, in connection with the parish church of St. John's, is now in course of erection; and a small chancel has been added to the mission-room at St. John's, Norwood. Wilmington Church is undergoing considerable enlargement. In the parish of Boughton Monchelsea, a mission church is building at the Quarries, for a population distant two miles and a half from the parish church. At Pluckley, mainly by a munificent offering from the Rector, a mission church is in hand for the benefit of that part of the parish, at a distance from the church, where, in consequence of the

discovery of brick earth of a superior quality, and the works established there, there is a population sprung up, which needs to be provided for. At Harrietsham, on the Rectory grounds, the church being at some distance, a mission church is in hand for additional Services on Sundays and week-days, and like objects. Last, not least, in the good town of Maidstone, where some undertaking of piety or charity is always in hand, set on foot, or finished oftentimes, by the individual munificence of Maidstone Churchmen, there is the work, now going forward, of completing the new church of St. Faith's, by the erection of the tower, an ornament to the sacred fabric itself, and also to the town of Maidstone.

In the midst of all these undertakings, multiplying upon us from year to year, in every part of the Archdeaconry, as you will have observed—and I have not, meanwhile, referred at all to the other side of the Diocese—I must take occasion, afresh, to remind you, my Reverend Brethren, of the urgent claims of our Church Building Societies, both the Diocesan Society which Archbishop Longley set on foot, and the Parent Society in Whitehall. Both of them alike well deserve a greatly increased measure of support. The Committee of the Diocesan Society, in the Report to be presented at the forthcoming

Annual Meeting, will find themselves under the necessity of expressing their regret "that, notwithstanding the Pastoral Letter from his Grace the Archbishop, the Church collections have been smaller than in previous years. To some extent," they think, "this may be accounted for by the general depression of agriculture and commerce, which has of late been so severely felt throughout the country. But if, by God's blessing, this should pass away during the coming year, the Committee would earnestly appeal to the benevolence of Churchmen to make up the deficiency by increased subscriptions and donations, to enable the Society to maintain its present scale of grants." I am well aware how many objects apply, in these days, for support; but I cannot but think that, to the congregations of our people, no claim can well be stronger than the appeal to them of their Diocesan, in his Annual Pastoral Letter, for this and the sister Society for Diocesan Education, for the supply of the spiritual necessities of our own people. And they should bear in mind how even a few shillings from every parish swell the general amount. "In the course of the past year, the Diocesan Church Building Society has lost by death several friends and subscribers, amongst whom they would especially mention Colonel Northey, of Sevenoaks, who, as a member of the Standing Committee, was ever ready to render

whatever help lay in his power towards forwarding the interests of the Society.

In the Addresses delivered by our Most Reverend Diocesan, in his Visitation last autumn, to the Clergy and Laity of his Diocese, the Archbishop opened before them a wide view of the coming conflict with different portions of the multitudinous host arrayed against the Church of Christ, "its conflict with the Atheist," "its conflict with the Deist," "its conflict with the Rationalist." As introductory, however, to what he wished to address to his Diocese at the several stages of his progress, his Grace took occasion, in his opening Address, to "say something as to the present position of our own Church, in reference to controversies which" had "of late much agitated it." On this subject the Archbishop observed, "I am thankful to say that I believe the agitations of the past years are subsiding; and that our Church may now soon be allowed to brace itself with undivided energy to the great conflict of these latter days."

At a Meeting, however, held towards the end of the year, of the Clergy of the rural deanery of Westbere, specially convened for discussion of some spiritual matters, the Archbishop began by saying, that it seemed "unavoidable that" he should address to them "a few preliminary remarks on circumstances which" had "occurred

in the last few weeks, provocative of disunion within our own Church. When I addressed my Clergy," said his Grace, "at my Visitation three months ago, I ventured to assert that the great majority of our people were heartily tired of such disputes;" and he added, "I still adhere to the same opinion, trusting in the good sense and good feeling of the members of our Church. But I cannot deny," the Archbishop went on to say, "that what I deem the very unwise course lately taken by the four Churchwardens representing the parishioners of St. Vedast, Foster Lane, in pressing for the imprisonment of their Pastor on a writ of contumacy, has to a certain degree checked the hopeful tendency towards peace and real Church work, for which all good Churchmen long. The events to which I allude have removed the ritual question from the sphere of reason and calm argument into that of feeling and excitement—a result much to be deplored. It is not surprising that many persons, who in no way sympathize with the extreme ritual which is the subject of litigation, should feel pained by the rough treatment with which their friends have met; and should not unnaturally feel indignant that clergymen of personally irreproachable character should be committed to gaol. I do not conceal from myself also," said his Grace, "that the questions raised in the minds of many by what has occurred are of a

very complex nature, peculiarly unsuited to be discussed in the midst of excitement." "I will make no further remarks," his Grace went on to say, "on the policy pursued by the irritated combatants in this quarrel. But what I would wish to urge on the attention of all of you is this—the absolute necessity, if you are dissatisfied with the present state of matters, of gravely and calmly considering the side issues raised in this controversy about ritual; I mean those which refer to the highest Court of Appeal, and the constitution of the inferior Courts, and the rights of Convocation, and the authority of the Bishops. You will readily allow that these questions, which have reference, on the one hand, to the independence of the Church and the Christian conscience, and, on the other, to the controlling power which every well-ordered State must exercise over all bodies, ecclesiastical or other, which exist within its dominions, are extremely grave. The whole history of England, and, indeed, of all other civilized countries, shows their gravity. No Church, established or unestablished, no body of men associated for any religious purpose, can claim to have any property secured to it, or to have any rights or liberties, unless it is willing to submit itself in many matters to the controlling power of the civil Government which protects it. The exact form," said the Archbishop, "in which this con-

trol is to be exercised over Churches, either those which are called free, or those which enjoy a well-regulated dependence under the protection of the State, is a fair subject for discussion and controversy. I believe myself, that, if we wish for real, reasonable liberty both for Clergy and Laity, and security for minorities, we shall find it in such arrangements as the great Statutes of the English Reformation sanctioned, rather than in any other scheme." "How far these Statutes have been adhered to in practice age after age," his Grace went on to say, "is a fair subject for discussion in our Reformed Church. But what I want to direct attention to is this—that, while we have many and discordant attacks made on our present system of ecclesiastical legislation and judicature, no one that I am aware of has come forward, as representing those who are dissatisfied, to advocate a scheme of practical reform such as appears likely to command the general assent of our Clergy and Laity. I know, my Reverend Brethren," said the Archbishop, "you will agree with me, that nothing in such matters is to be gained by violence either of action or of speech. What I wish to commend to all who are agitated by recent events is this—that they should calmly ask themselves definitely what they want. The answer cannot be the short and easy one, that they desire all intricate

questions of law and procedure to be decided according to their personal wishes. If they are anxious for certain important changes in our existing constitution, let them state explicitly what they are; and they may rest assured that their suggestions will be respectfully and calmly considered. The Convocation of the Province of Canterbury," said his Grace, "will meet in February, and have an opportunity of considering any definite proposals that are made; and the Laity will have full means also of making known their agreement or disagreement with such proposals." The Archbishop then referred to what he held in his hand, and which he described as "a very carefully drawn and valuable Report of a Committee of the Lower House of the Convocation of Canterbury," which treated "with much fulness and fairness the intricate historical and constitutional questions thus raised." With regard, in particular, to the present form of our highest Court of Appeal, which was "adopted within the last ten years, in deference," said the Archbishop, "to what were then supposed to be the wishes of what is called the High Church party," "if there is anything faulty in it," said his Grace, "by all means let it be amended. All true Churchmen, desirous that the Church of England should fulfil its heavenly mission, will, I feel confident, endeavour to allay any excitement which is around them;

and, if they find that strong feelings have been aroused, will apply themselves, in a quiet spirit of prayer, to consider whether any changes ought, for the Church's highest welfare, to be made, and, if so, what they are."

I have recited, my Reverend Brethren, thus fully the advice which our most Reverend Diocesan addressed thus recently to the Clergy of one rural deanery—viz. that in which he was at the time residing—because the godly counsel which he gave to them applies equally to the whole Diocese; and demands a more deliberate consideration than it would obtain, perhaps, if only casually read at the time in the columns of a daily paper.¹ I have thought, therefore, that I should be acting in accordance with the spirit and purport of that counsel, if I availed myself of the opportunity afforded us in this solemn assembling of ourselves—preserving, as it does, the vestiges of the ancient, yearly, Synodal gatherings of the Clergy—to open, at least in some degree, however imperfectly, a subject which you would with advantage follow up in quiet and patient thought, agreeably with the desire and counsel of our Diocesan.

When the Convocation of the Province met for the dispatch of business, on Tuesday, February 8, the first notice of business given to the Upper House was, that "His Grace the

¹ See *Times*, December 15, 1880.

President" would "call the attention of the members of the Upper House (1) to the Report of the Lower House on 'the Relations of Church and State' (presented to the Upper House on the 4th of July, 1879), with special reference to the Constitution of Courts Ecclesiastical," and (2) "to the recent prosecutions for Ritual Offences." The result of full deliberation on the subject by the Upper House was a unanimous request that the Archbishop would, in the name of his brethren, the Bishops, apply for a Royal Commission to investigate these matters; his Grace having communicated to his brethren, that he had reason to believe that there would be no objection on the part of Her Majesty's Government to grant such a Commission. The Archbishop further undertook to bring before the House of Lords, on the behalf of the entire Episcopal Bench, a motion for a petition from the House of Lords; which, when it was moved by the Archbishop on the 7th of March, was agreed to without opposition.

Doubts have been expressed in some quarters, whether the terms in which the object of the Commission is worded are not so limited that it would produce simply a Report of the constitution and past history of the Courts of Judicature concerned, without any requirement as to the suggestion of alteration, if need be, to be recommended by the Commission. But I think it

must be regarded as a doubt unworthy to be entertained, whether a Commission, applied for and granted as this has been, in consequence of the serious difficulties and embarrassments which have arisen as matters of fact, would for a moment think of stopping short of any recommendations which might commend themselves to the Commission—doing less, in reality, than the Committee of the Lower House of Convocation has, in the Report referred to by the Archbishop, to the best of its power, attempted. Such a result, assuredly, cannot for a moment be anticipated. It would be nothing less than to

“keep the word of promise to our ear,
And break it to our hope.”¹

This Commission, however, having been thus granted by the consentient and concurrent action of the heads of the Church and the authorities of the State, is an additional reason why we of the Clergy, and our brethren of the faithful Laity, should, as the Archbishop desires, apply our minds quietly and patiently to the question, how certain difficult problems in regard to these matters may best be solved, with least disturbance of established order, and therefore with the best chance of successful action.

To take in inverted order the points which the Archbishop has specified. First, in regard to the authority of the Bishops; his Grace, in

¹ See Note B.

his opening Visitation Address, referred to "the oft-quoted words of the Preface to the Prayer Book," and observed that, "whatever men may think of the decisions of any Court—secular, ecclesiastical, or mixed—it is with their Bishops, to whom they have sworn canonical obedience, that they have to reckon in their controversy." I am glad, my Reverend Brethren, to see signs, as I think, in different quarters, of an increasing disposition to occupy this indisputable ground. And I may, in this connexion, perhaps be permitted to recall to mind that, in addressing you ten years ago, I ventured to express that, if there was difficulty and expense in enforcing law, there was, "in our case, the much more effectual principle—if only the principle be appealed to, and strengthened by being rightly used—of due canonical obedience to those who are, in their several places and degrees, 'put in authority over us.'" I took the liberty to observe that the Church's rule provided not only for "parties that *doubt*," but also for those that "*diversely take* anything;" and certainly it could not be disputed that, in the matters concerned, parties—and among them men of high authority—"diversely take" certain regulations.¹ But it appears now-a-days to be further pleaded that there is a qualifying clause.

¹ *Visitation Courts and Synods*. A Charge delivered at the Ordinary Visitation in May, 1871 (pp. 14-17). See Note C.

The Bishop, indeed, to whom such parties are "always" to "resort," "by his discretion shall take order for the quieting and appeasing of the same" doubts or diversities, "so that the same order be not contrary to anything contained in this Book;" but the party concerned is so confident, may be, of the correctness of his own interpretation, that he pronounces the Bishop's ruling to be contrary to the Book, and so to have no binding force upon the conscience of the clergyman. It must surely be palpably evident, on the slightest consideration, that this plea would simply nullify—not to say stultify—the rule of the Prayer Book. To what purpose is the Bishop to have the power to interpret, if, after all, the individual clergyman is to be the supreme interpreter and judge?

It must at the same time, I think, my Reverend Brethren, be fairly said, that the duty of reverent obedience to the Bishop, on the principles of canonical order, has, in many cases, hardly had full and free scope left for its exercise. And this owing to the unhappy disposition to carry these matters into the outer Courts of temporal law. The course of things has oftentimes been this. There has been, in the first place, the machinery of newspaper attack, or the well-known "aggrieved parishioner" or non-parishioner; and proceedings threatened by some outside parties; and recourse thereupon,

not unnaturally, to defenders from outside: and all this has tended to keep aloof the Bishop from the Priest and the Priest from the Bishop; when, as I believe, in many cases, if they had come into immediate communication with each other, and, with "the door shut upon them twain," and the outer world shut out, the spiritual relation between them, as between a "Father in God" and his spiritual "sons" in Christ, had been allowed to plead its own cause, and hold its natural and genuine sway, it would have been oftentimes, as in the description given by our poet of the good Man of Ross—

"Is there contention? Enter but his door,
Balked are the courts, and contest is no more."

It was so certainly in a case well known to many in this Diocese, where the clergyman threw himself and his conscience on the Episcopal responsibility of his Diocesan; and the conflict came to an end. It is natural, no doubt, that a Bishop should feel unwilling to pronounce his own judgment on a doubtful rubric; he would be apt to feel himself standing on stronger ground, and to be acting less arbitrarily, as he might think, towards one of his Clergy, if he appealed simply to the ruling of Courts of Law: but he has too often, thereby, come to be regarded as the simply ministerial executor and enforcer of doubtful, and perhaps discordant, legal judgments; and, however kindly

intended, the effect may none the less have been most unfortunate.

In regard to the protective rights of the Episcopal office, one event I must record with great satisfaction; viz. the decision of the Court of Appeal, and subsequently of the House of Lords, maintaining the lawfulness of the exercise of the Bishop's discretion, as provided for in the Church Discipline Act of 1840; in regard to the promoting of the office of the judge, in what the Bishop may deem frivolous or vexatious suits, or proceedings, in his judgment, improper to be taken. I thought it right, having been fully cognizant, in regard to that Act, of the intention which had been generally supposed by legal authorities to have been carried into full effect, to put forth the grounds of that view in some historical matter appended to the Charge which I addressed to you four years ago on these questions;¹ and it was with great satisfaction that I found the meaning of the contested words "it shall be lawful" finally determined as it was, recognizing fully the discretion vested in the Bishop. With reference to these controversial cases I must say, that questions have been carried to the Court of Appeal of the Province and to the

¹ *The Church in its Divine Constitution and Office, and its Relations with the Civil Power.* A Charge delivered in May, 1877 (pp. 74, 75).

Court of Final Appeal, which, if the rule of the Prayer Book is to be regarded, were to be dealt with entirely by the Bishop; the Bishop being at liberty, if he were in doubt, to send to the Archbishop. It was not contemplated that the Bishop and Archbishop alike were to have their discretion altogether overruled by sentences of law. These questions have, therefore, really been tried *coram non judice*, if the Church's rule is to be our law; and hence our manifold perplexities and troubles.

The truth is, our Rubrics were never intended for iron rules, to be interpreted and enforced in the hard and fast lines of temporal Courts of Law: their very ambiguities and difficulties bear witness, when we carefully examine their history, to conflicts of opinion and tendencies of feeling in different directions, which would have made rigid uniformity in minutiae to have been purchased at the cost of multiplied division. Nothing would be more easy than to propose in the place, for instance, of the "Ornaments Rubric," a new rubric perfectly distinct and unmistakable in its meaning. The Ritual Commission, in fact, at first resolved, after examining many witnesses and holding several meetings for deliberation, to draw up such a rubric; "a short and easy method," simply to embody present practice, and make it the absolute rule. But before they presented their final Report, the

Commissioners changed their view, and—wisely, as the late Bishop Thirlwall judged, and prudent Churchmen generally with him—determined to leave it alone.¹ And, let us just consider, supposing a new rubric to be brought before Parliament for discussion there—for this would be inevitable—to regulate the dress of the minister, what a small portion would, after all, be touched, of matters of recent complaint! A legal “Handy-book of the Public Worship Regulation Act,” enumerates thirty-five such points.² It is unauthorized changes in the Service, insertions and omissions, unaccustomed rites and ceremonies, unknown to the Prayer Book and strange to the people,—it is these things mainly, and not the mere vestments, which offend and alarm men. And if new rules were enacted for rigid observance, with the principle which is sometimes strongly laid down, that omission is equivalent to prohibition, let us take an instance of how we should fare—the Lay members of our congregations alike with the Clergy—in regard to some traditional customs, most harmless and almost universal. For example, the custom of turning to the east when we recite the Creed—a custom dating from the earliest ages of Christianity, long before there was any Pope in the West. There are in some of our congregations, I imagine, those who would not like to have

¹ See Note D.

² See Note E.

a custom of this kind enforced upon them; while the great majority of our people, on the other hand, in a vast number of our country parishes especially, would be deeply offended if, for observing it, they were made transgressors. I trust that we in England, who enjoy the blessing of our Book of Common Prayer, happy in all that it enshrines of Catholic truth and Scriptural verity, with its strong witness and protests against uncatholic belief, Romish novelties, and sectarian error; not less happy in the Christian liberty which it allows on lesser points; may ever “stand fast in the liberty wherewith Christ hath made us free, and be not entangled again,” under whatever form or disguise, “with the yoke of bondage.”¹

In connection with this subject of the Church’s ritual, I would report that, while the Upper House, in the late sessions of Convocation, was engaged as I have described, the Lower House, after long and anxious discussion, adopted and presented to the Upper House an amended Representation, which concluded with this as its prayer—“That your Lordships, having regard to the uncertainties which have been widely thought to surround some recent interpretations of ecclesiastical law, as well as the peculiar character of parishes and congregations placed in the most dissimilar religious circumstances,

¹ Gal. v. 1.

would discountenance, as far as possible, legal proceedings in these matters. In making this request," it was added, "the House feels that this forbearance must be conditioned by limitations. It prefers, however, to remit the consideration of those limitations to your Lordships assembled in this sacred Synod under the guidance of the Holy Spirit."¹

I pass on to another point in the Archbishop's enumeration of matters to be specially considered—"the constitution of the inferior Courts."

(a) With reference, in the first place, to the Bishop's Diocesan Court I would observe, that there appears to prevail an impression that the Act of 1840, now in force, ignored altogether the existence of such Courts, and was a move in an unecclesiastical and uncanonical direction. This impression, however, is far from correct. The Act did, indeed, make provision for the substitution of a reformed Diocesan Court in the place of the existing Consistorial Court, presided over by the Bishop's Chancellor. And this change was grounded on the principle, which had been laid down in the able and highly esteemed Report of the Commissioners of Ecclesiastical Law of 1832, that it was desirable to "restore to the Bishops that personal jurisdiction

¹ See Note F.

which they originally exercised, and which was afterwards delegated by them to their Chancellors and officials." The Commissioners grounded this recommendation upon the doctrine of *the Canon Law*, that, although the trial of causes of certain descriptions might be properly entrusted to a Lay Judge, to the Bishop himself belongs inquisition, correction, punishment of offences, or removal from a benefice. "Agreeably to this principle," they observe, "the power of deprivation is reserved by *our Canons* to the Bishop in person; and the same principle seems to apply to the case of suspension, and to the infliction of any other censure which may affect a clergyman's spiritual functions." In accordance with these suggestions, the Act provided that, when action is required, "the Bishop shall proceed to hear the cause, with the assistance of three assessors, to be nominated by the Bishop, one of whom shall be an advocate who shall have practised not less than five years in the Court of the Archbishop of the Province, or a serjeant-at-law, or a barrister of not less than seven years' standing, and another shall be the Dean of his Cathedral Church, or of one of his Cathedral Churches, or one of his Archdeacons, or his Chancellor; and upon the hearing of such cause the Bishop shall determine the same, and pronounce sentence thereupon according to the Ecclesiastical Law." The provisions of this Act,

it is to be observed, were the result of very full and grave discussion among the Bishops, and in particular on the part of the late Bishop of Exeter; who had strongly insisted on the recognition of the Episcopal principle; while the arrangement for the assessorship made what was considered to be more satisfactory provision, in regard to legal advice, than was afforded by the ordinary Consistorial Courts.¹

(b) It is, however, the constitution of the Court of Appeal of the Province, as affected by the Public Worship Regulation Act of 1874, which, I think, contains within it the gravest subject of consideration; indeed, far more than even the Court of Final Appeal. The precise wording of the Act will require, if I mistake not, the most careful examination. By section 7, it gives to the two Archbishops, subject to the approval of her Majesty, to be signified under her sign manual, power to appoint from time to time a lawyer, legally qualified in a certain way, "to be, during good behaviour, a Judge of the Provincial Courts of Canterbury and York, hereinafter called 'the Judge.'" And "if the said Archbishops shall not, within six months after the passing of this Act, or within six months after the occurrence of any vacancy in the office, appoint the said Judge, her Majesty may, by letters patent, appoint some person qualified as

¹ See Note G.

aforesaid, to be such Judge." It then goes on to enact as follows:—"Whenssoever a vacancy shall occur in the office of Official Principal of the Arches Court of Canterbury, the Judge shall become *ex-officio* such Official Principal; and all proceedings thereafter taken before the Judge, in relation to matters arising within the Province of Canterbury, shall be deemed to be taken in the Arches Court of Canterbury;"—and so in like manner in regard to the Chancery Court of York;—"and whenssoever a vacancy shall occur in the office of Master of the Faculties to the Archbishop of Canterbury, such Judge shall become *ex-officio* such Master of the Faculties."

"With reference to the mode of appointment of the newly created Provincial Judge," who had succeeded thus to the office of Dean of the Arches of the Province of Canterbury, and to the corresponding office in the Province of York, I took occasion to say, when I was addressing you on these matters four years ago, "that some of the provisions of the Act had regard to this first appointment simply; and that there was, as I understood"—for I had made some inquiry on the point—"nothing to prevent a successor being appointed," whenever a vacancy occurred, "with powers conveyed directly, as in former instances, by the spiritual authority of the Archbishop." "This clause," as was further said in a Note added to what

I had thus reported to you, "provided for a certain anticipated event—the vacancy, by resignation, of these offices; but was evidently inapplicable"—so, at least, it seemed—"to any future case when these vacancies all become vacant together by the resignation, or death, of 'the Judge.'" The Act did not say that these offices should all be from henceforth united *in perpetuum*; the provision made thereby, as I was informed, and as it rather appeared on the face of it, was for the particular case in which the new Judge, already appointed by virtue of this Act, was to have right of succession to the other offices whensoever they should become vacant. "It is to be hoped, therefore," I ventured to say, "that, whenever a vacancy occurs in the office of Dean of the Arches and Official Principal of the Arches Court of Canterbury, he will be duly appointed according to the ancient forms; since there will be no one into whose place he can succeed by virtue of the provisions of the Public Worship Regulation Act of 1874."¹

Having expressed this hope, in regard to the interpretation of the Act, I regret to be under the necessity of adding that, having now consulted further what may be regarded, I think, as high and trustworthy legal authority, I learn that "the better opinion," in a legal sense of

¹ See Visitation Charge, May, 1875, pp. 41, 42.

the word, appears to be that the term "whenever," in the Act, means "as often as;" and that *on each vacancy* the new Judge becomes Judge under the Act, and also Official Principal of the Arches and the York Courts. "The scheme of the Acts," as it may be called, "seems," I am told, "to be this—a Judge under the Act to be appointed now,—in the first instance—and 'from time to time,' as a vacancy occurs. On the first vacancy in the Arches, the then Judge under the Act becomes"—or, we may now say, became—"Official Principal of the Arches. In like manner as to York. Then, when the Judge (who has so become also Official Principal of the Arches and of York) vacates his Judgeship, he will also vacate the Official Principalship. Upon this vacancy a new Judge will be made Judge; and, being made Judge, will become also Official Principal."

If this, which is thought, as it would seem, to be "the better opinion," should be decided by authority to be the true, legal meaning of the Act, a question undoubtedly arises of the utmost gravity. It is, I fear, nothing less than this. It is held on all hands now that no new Court has been created: if so, there will have been done, unwittingly, what is far more serious—there will have been made an essential constitutional change in the Court of Arches, secularizing it; taking it away, in fact, from

the Archbishop and the Church, and making it a temporal Court of the realm. When expressing to you, my Reverend Brethren, four years ago, the hope which I had been led to entertain, I added that, "at the same time, I should not deal faithfully with the opinion which I had been compelled to form, if I did not venture to express my regret, that it had appeared to legal minds necessary that the new Provincial Judge should be invested with all the powers of the Civil Judges; and, in order thereto, that he must be appointed with the sanction of the Crown. And further," I went on to say, "in case of difficulty in regard to a concurrent appointment by the two Primates—a case not impossible, or it would not have been expressly provided for—the entire appointment is given over to the Crown; a provision which seems at variance with the principles of our ecclesiastical system, which, up to the last resort, would make the Judge of the Ecclesiastical Court the direct representative and commissary of the Bishop or Archbishop. In the contingency thus provided for in the Act," I said, "we might see the whole ritual of the Church of England, in both Provinces, dealt with by a single Lay Judge, deriving his authority in no degree from a spiritual source; with no knowledge or experience, possibly, of Ecclesiastical Law or the practice of the Ecclesiastical Courts; and with

no other qualification required by the Act than that he should be a barrister of ten years' standing, or one who had been a Judge in one of the superior Courts of Law."¹

It is manifest, I think, my Reverend Brethren, that the question of the legal interpretation of these provisions must come under the grave consideration of the Commission now happily granted by the consent of Church and State. It will be found, I believe, fully to deserve—and, I doubt not, it will receive—careful inquiry on the part of the Commission about to sit, whether the difficulties, disappointments, and public scandal which have arisen in regard to conflicting penalties—imprisonment in particular—have not arisen out of the setting up, not of a new Court, indeed, but of a new judicature, a newly constituted Judge, in the Church's Courts; clothed with authority and attributes belonging neither to the ecclesiastical nor to the temporal Courts of England; but to what has "the likeness" of a new creation, which is neither the one nor the other, distinctively, but with something of a composite character, unknown hitherto to the system and order of this Church and realm. Amidst the proverbial uncertainties of law, it would be obviously presumptuous in any so-called "layman" (in legal phrase) to pretend to interpret an Act of Parliament. But if I am

¹ Visitation Charge of 1877, pp. 46, 47. See Note H.

called upon distinctly to say at the present time what it is that I desire, I must plainly say, that, as at present advised, with all the lights which I have been able to obtain upon the matter—if, indeed, what is regarded as “the better opinion” should be ruled to be the legal sense of the Act—what I desire, primarily and above all things, is that the Archbishop and the Church of Canterbury, and the whole Province, should have given back to them the Court of Appeal of the Province, the Court of Arches, which is the Church’s rightful possession; and the restoration of which to its true ecclesiastical position and character appears to me, I must say, essential to the safety, the welfare, and the peace of the Church.

I will only add that, if the inquiry now to be made by the Royal Commission result in clearing up doubts, and bringing the arrangements to the test of their harmony with “those great Statutes of the English Reformation” to which the Archbishop referred, it will be an auspicious result for the Church, and not less—I may say—for the State. The State has, indeed, a great and deep interest therein. For, little as some persons in these days may suppose it, it is not the less true that, by the recognition of the Church’s Courts, their independence and freedom, to quote the language of Magna Charta, the State is set free from being mixed up with doctrinal and ritual and controversial matters,

which otherwise must come before it. They come before it, according to our constitutional system, only in the last resort. A question as to the doctrine, creed, or practice of an unestablished sect must come in the first instance, as in a recent notorious case, before the temporal Court; whereas questions concerning the Church, her own tribunals, duly recognized by the State, are authorized to deal with, unless, ~~her~~ temporal rights being involved, the final appeal has to be made to the civil power. It is manifest that, when Roman governors could bid Jewish accusers take the accused and judge him after their law, in their own accredited courts, the Roman State was delivered from a great amount of most harassing and perplexing religious controversy; while it possessed, in all its fulness, the supreme power of life and death, and was the ultimate referee for all its subjects. The established relations between the Church and the State in England give, in truth, both to the State and to the Church a freedom which they would not otherwise possess. So entirely at variance is the fact with modern theories, and the popular dicta of those who would profess to "liberate Religion from State control." But this requires that we slip not away unawares from our old moorings; but rather, while we adapt ourselves, indeed, to altered circumstances, maintain unimpaired, in all their integrity, our

ancient principles. In accordance with those principles, as enshrined in the great "Statute of Appeals," in the constitution of this realm of England there is the spirituality and the temporality, with judges and ministers of each; and "both their authorities and jurisdictions," in the language of that Act, "do conjoin together in the due administration of justice, the one to help the other." So long as there is no confusion introduced between them, each wields its own appointed weapons; the Church not claiming the temporal sword, nor the State the spiritual keys; both alike God's institution in different spheres of action; both alike ruled by Him who is at once "the head over all things to the Church, which is his body,"¹ and at the same time, "the head of all principality and power," "the prince of the kings of the earth."²

On the questions concerning the Supreme Court of Appeal and the rights of Convocation, I have not attempted to enter. The limits necessarily assigned to an Address like this would preclude it; and I am conscious that I have already somewhat exceeded those limits, and must plead as my excuse the importance, at the present moment, of the matters in hand. The constitution, moreover, of the Court of Final Appeal, I have, on more than one occasion of Visitation, referred to under varying circum-

¹ Eph. i. 22, 23.

² Col. ii. 10; Rev. i. 6.

stances. In particular, with regard to the arrangement last made, in regard to a body of Episcopal assessors, appointed in a certain rotation, to be always present to inform and advise the Court when spiritual causes are before it, I thought that "a right principle being here recognized," it would "be our wisdom to watch matters patiently and considerately, at the" then "present time, in regard to the satisfactory working of the new provisions."¹ I would only observe, that it is greatly to be desired that the Commission now to be appointed should, among other matters, carefully consider the proposals on this subject made in Bills brought into the House of Lords from year to year by the Heads of the Church, long before the case of *Gorham v. the Bishop of Exeter*; one of those Bills in particular having been carefully considered and amended by a Select Committee of the Lords.²

Amidst the responsibilities which devolve upon us, and the dangers which beset us in the execution of the office entrusted to us by our high commission, we, my Reverend Brethren, as "watchmen on the walls" of our Jerusalem³ are called to exercise sleepless vigilance—

"When round our walls the battle lowers;
When mines are hid beneath our towers;
And watchful foes are stealing round
To search and spoil the holy ground."⁴

But still, amidst it all, "in quietness and in

¹ Charge, 1877, p. 41.

² See Note I.

³ Isa. lxii. 6.

⁴ *The Christian Year*: Eleventh Sunday after Trinity.

confidence shall be your strength.”¹ As the Psalmist spake of old, in words which we have, in the opening of this our solemn assembly,² joined in reciting, “Therefore will we not fear, though the earth be moved: and though the hills be carried into the midst of the sea; though the waters thereof rage and swell: and though the mountains shake with the tempest of the same. There is a river, the streams whereof make glad the city of God: the holy place of the tabernacles of the most High.”³ If she be but faithful to HIM; if “the ministers and stewards of His mysteries” guard the deposit committed to her, and “watch for souls as they that must give account;” He will “make fast the bars of” her “gates, and bless” her “children within” her.⁴ “For God is in the midst of her,” we humbly trust; and we believe that we have gracious tokens of His presence, in the blessing vouchsafed to our work, and its great and wonderful increase, notwithstanding all our shortcomings and sins; “God is in the midst of her, therefore shall she not be removed: God shall help her, and that right early.”

And to Him, even to the blessed and glorious Trinity, Three Persons and One God, “be glory in the Church by Christ Jesus, throughout all ages, world without end. Amen.”

¹ Isa. xxx. 15.

² Morning Prayer, Ninth Day; the first day of the Visitation.

³ Ps. xlvi. 2-4.

⁴ Ps. cxlvii. 13.

NOTE A.

The Address, or Charge, delivered to the Churchwardens and Sidesmen of the Archdeaconry at the Easter Visitation last year (April 26-30), on the "Rights and Duties of Churchmen at the Present Time," not having been published in the same form with other Charges, but only a limited number of copies printed at the office of the *Maidstone and Kentish Journal*, it seems desirable to reprint the latter part of the Charge, in connection with the present state of Church matters, in regard to dangers from without; lest the Charge delivered to the Clergy this year should seem to pass by those matters with too little notice. Assuredly it has not been for lack of anxious thought and concern in regard to them.

After noticing some Church works as then in hand, the further progress of which towards completion I am able to report this year, I went on to say, "With works such as these which we see in hand, as we pass from deanery to deanery, or from parish to parish, and with the prospects which seem opening before us from day to day, of conservation and improvement combined—and that 'by means of the gift' of zeal and charity 'bestowed by many persons, differing widely on other matters, as in the case of some whose good works I have referred to to-day, and specially of those faithful and excellent Laymen, gone from us, and from their different spheres of useful service, whose memories I desired to recall in my Address to the Clergy last year;—with thoughts and duties and hopes like these, amidst the difficulties and discouragements which constantly beset our path, it cannot certainly to thoughtful Churchmen, whether of the Laity or of the Clergy, appear otherwise than an anxious crisis at which we seem somewhat suddenly to have arrived. It will not, I am persuaded, appear strange to you, my Lay Brethren, if in few words, before I conclude, I advert to it: it would rather, I imagine, seem strange to you if I did not. Political questions within the lines of the constitution of our country, such as have successively, under different designations, subdivided Englishmen, in opposing parties, from each other for the last two hundred years, it would be out of place to enter upon within sacred walls, and in what is, in point of order, an ecclesiastical assembly and court. But it is a different matter when that which is concerned is the very 'birthright of the people' of England— if I may use the language of the statesmen who drew up, at the memorable close of the seventeenth century, the Act of Settlement—combining as it does within it the national sentiments, the

rights and privileges claimed alike by both the hereditary parties which belong to the history of our country.¹ And our position at the present moment, I think, is one which may well cause us to look out from this happy island home of ours, upon the world on whose peace and welfare England has, under God's providence, amidst past troubles and dangers of Europe, had an auspicious influence ; and above all, my brethren, to look up in humble confidence and steadfast hope, notwithstanding all our shortcomings and sins as a nation, to the throne of Him who 'sitteth above the waterflood' and 'remaineth a King for ever ;' even He who alone can 'give strength unto his people,' and 'give his people the blessing of peace.'²

"I may, perhaps, the more freely say a few words on this subject, because, while I write, preparing to meet you in this Visitation, there is absolutely nothing known in regard to political affairs ; save that our Queen, returning only a week ago from a visit to the tomb of a beloved daughter, over whom all England was mourning last year, applied herself without delay to the difficult and important duty which devolves on the Crown ; and, following with faithful and careful observance the lines marked out for her by constitutional practice, has taken steps for the forming of a new Administration. The circumstances under which the change of Ministry has taken place are somewhat peculiar ; and we shall, if I mistake not, the better perform the duties which the

¹ "And whereas it is requisite and necessary that some further provision be made for securing our religion, laws, and liberty, from and after the death of his Majesty and the Princess Anne of Denmark . . . It is enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords, spiritual and temporal, and Commons, in Parliament assembled, and by the authority of the same, That whosoever shall hereafter come to the possession of this crown shall join in communion with the Church of England, as by law established . . . And whereas the laws of England are the birthright of the people thereof ; and all the Kings and Queens, who shall ascend the throne of this realm, ought to administer the government of the same according to the said laws, and all their officers and ministers ought to serve them respectively according to the same ; the said Lords, spiritual and temporal, and Commons, do therefore further humbly pray, that all the laws and statutes of this realm for securing the established religion, and the rights and liberties of the people thereof, and all other laws and statutes of the same now in force, may be ratified and confirmed, and the same are by his Majesty, by and with the advice and consent of the Lords, spiritual and temporal, and Commons, and by the authority of the same, ratified and confirmed accordingly."—Statute 12 and 13 Gulielmi III., cap. 2(1). A. D. 1700.

² Ps. xxix. 11.

position of affairs requires of all good citizens, all dutiful subjects of the Queen, and faithful members of the Church, if we clearly perceive and fully realize the position. A few words will state it. Ordinarily, an adverse vote of the Commons of England, in opposition to some particular measure proposed by the Government, or to its general policy, proves that the Administration has lost the confidence of the House of Commons, and is unable to carry on affairs. A resignation of Ministers is the result—other men are called to the helm, representing the adverse opinions. In the present instance, the dissolution of a Parliament which was drawing near to its natural end having been determined on by the Government, on no precise question of policy, and the Ministry having at once resigned, the lines of coming action are entirely undefined and unknown. We know nothing at the present moment, even in regard to the general policy, at home and abroad, to be agreed upon, after mutual conference, by the heads of the party now called to the helm; we know nothing decisively as to the probable composition of the Administrative Cabinet; still less of the deliberate judgment on important questions, after debate, of the new House of Commons—the only representation known to the Constitution, of ‘the Commons of England.’ But this we know, that views and opinions of the most diverse and heterogeneous character are gathered in one host; some of them entirely consistent with the maintenance of our Constitution, with sober sense and rational liberty, while others are of a wild and lawless character, utterly destructive of national order and unity, of the welfare of our country, and the peace of the world; principles at open war, not only with the doctrines of the Church, but with Revealed Religion altogether; with the very being of a God; with the maxims of eternal morality and the sanctities and purities of domestic life. We have seen, in the progress of the recent conflict, places of professed religious worship turned into centres of political agitation; and men whose characters stood high among their fellows for religious principle and strict conscience, so hurried away by the political feeling of the moment as to be willing to merge all differences of opinion, and give open support to the candidature of avowed infidelity, and views of morality which had outraged public feeling; canvassing for a seat in a House of Legislature which still, happily, opens all its deliberations from day to day with prayer to Almighty God. We shall surely seem to the well-judging and candid to take no exaggerated or unreal view of our position, if we feel that we seem suddenly brought, I will not say to the edge of a precipice, but, I may say, to the terrace, as it were, of some hill, or lofty ridge, like that which overlooks some of our lovely plains and valleys in Kent; and the morning is still

dim ; and there is a mist resting upon the landscape, and we stand in doubt whether, when the clouds remove, we shall look out upon a scene of tranquil abodes, of peaceful and rural toil, gathered round the church towers and spires of our country villages—a scene like that which the prophet of old saw stretched before him, when he stood ‘on the top of Peor that looketh towards Jeshimon,’ with the King of Moab, who had brought him there to curse Israel, ‘and he saw Israel abiding in their tents, according to their tribes ;’ ‘as the valleys’ were ‘they spread forth, as gardens by the river’s side, as the trees of lign aloes which the Lord had planted, and as cedar trees beside the waters ;’ or whether the scene is to be such, in England, in Europe, and in the world, as in the description which the poet of *Paradise Lost* has put into the mouth of the angel, as that which broke upon the view of the angelic armies, when—

“ ‘On heavenly ground they stood, and from the shore
They viewed the vast immeasurable abyss,
Outrageous as a sea, dark, wasteful, wild,
Up from the bottom turned by furious winds
And surging waves, as mountains to assault
Heaven’s height, and with the centre mix the pole.’ ¹

“It is impossible to look out on the continent of Europe and not see what a seething mass there is beneath the surface ready to boil over ; how ‘great matter’ is laid up among nations prepared for war, ‘armed to the teeth,’ materials highly inflammable, which ‘a little fire’ might in a moment kindle.² If the Administration which now comes into power is able to take more effectual measures for the peace of Europe and of the world than the late Government did, their efforts will be regarded with unfeigned satisfaction by the faithful members of a Church, which has always been distinguished by loyalty to the Crown, and true, unflinching patriotism ; and which, in her appointed daily Service, offers up each morning and evening the prayer, ‘Give peace in our time, O Lord ;’ distrusting, for any effectual aid, any succour but that of Him whose ‘kingdom is everlasting and power infinite ;’ ‘because there is none other that fighteth for us, but only thou, O God.’

“Or if the prevailing feeling among a large body of our constituencies has been that commerce and agriculture had been alike sadly depressed, that things could not be worse, and possibly in other hands might be better, the Clergy, whose sympathies are, to

¹ *Paradise Lost*, Book vii. 210, 215.

² S. James iii. 5.

so large an extent, with those among whom their lot is cast—their country neighbours, the gentry, the yeomanry, and the peasantry of the land—will heartily rejoice; and those in like manner who minister to the people in our towns—in more prosperous cultivation of the soil, and continued revival of trade: but neither they nor their lay brethren will forget, ‘whose gift it is that the rain doth fall, the earth is fruitful, beasts increase, and fishes do multiply;’¹ they will not be looking to fallacious hopes of impossible remedies, much less to sacrilegious despoiling of His Church and people, who hath said, ‘I the Lord love judgment; I hate robbery for burnt offering.’ They will rather say, in the language of earnest pleading and entreaty of the plaintive prophet of old, ‘We acknowledge, O Lord, our wickedness, and the iniquity of our fathers; for we have sinned against thee. Do not abhor us, for thy name’s sake; do not disgrace the throne of thy glory; remember, break not thy covenant with us. Are there any among the vanities of the Gentiles that can cause rain? or can the heavens give showers? art not thou he, O Lord our God? Therefore we will wait upon thee: for thou hast made all these things.’²

“Some persons, I know, would urge the Clergy to borrow a leaf out of their adversaries’ book, and, in their pulpits and their official relations with their people, take an active part in politics. I am fully persuaded that the Clergy will do nothing of the kind. The duty of good citizens and patriots devolves upon them; and I trust they will ever faithfully discharge it. If, indeed, that should come upon us which came on the remnant of Judah, when they were labouring to build up peacefully the walls of their Jerusalem, and Sanballat the Horonite, and Tobiah the Ammonite, and Geshem the Arabian, with ‘the Arabians and the Ammonites and the Ashdodites,’ ‘conspired all of them together,’ as we read, ‘to come and fight against Jerusalem, and to hinder it;’ it will be our duty to do as Nehemiah, the pious governor and the faithful of Judah, did,—‘We made our prayer unto our God, and set a watch against them day and night, because of them.’³ Our earnest desire is to build up, in peace, the spiritual walls of our holy city; to labour for the ‘edification,’ the building up of our people on their most holy faith:⁴ and we must look specially to our brethren, the faithful laity, to do what Nehemiah looked to his brethren for, when he ‘set the people after their families with their swords and their spears, their habergeons and their bows; and I said unto them,’

¹ Prayer in the time of Dearth and Famine.

² Jer. xiv. 20–22. Comp. ver. 1, “The word of the Lord that came to Jeremiah concerning the dearth.”

³ Neh. iv. 7–9.

⁴ S. Jude 20.

saith he, 'Be not ye afraid of them: remember the Lord, which is great and terrible; and fight for your brethren, your sons, and your daughters, your wives, and your houses.'¹ If, like those 'feeble Jews,' as their adversaries called them, we are even compelled to do as they, to hold their weapons in the one hand, while with the other they built up the wall, we shall bear as best we may the grievous hindrance to our work;² for we shall feel that there are no less sacred interests at stake than those which nerved the hearts and strengthened the hands of the remnant of the captivity; if we have to contend for the sacredness of God's house and 'God's acre,' the religious education of our children, the inviolate sanctity of the Church's laws of marriage, and the peaceful purity of our homes. Amidst whatever changes of sides in the political world, we shall take for our own guidance those words of St. Peter which formed part of the Epistle for last week, 'Honour all men. Love the brotherhood. Fear God. Honour the king;' or those other counsels of St. James, which we read in the Epistle for this week, 'Wherefore, my beloved brethren, let every man be swift to hear, slow to speak, slow to wrath; for the wrath of man worketh not the righteousness of God.' From the conduct of some men it would verily seem as if the outbreak of man's wrath were now supposed to be the best, the chosen and divinely approved instrument for God's righteousness to work by. But meanwhile His faithful servants will find comfort and support in the Psalmist's assurance, 'Surely the *wrath of man* shall praise thee; *the remainder of wrath* shall thou restrain.' We shall think it our wisdom, looking back on a time of political conflict, long protracted and of unexampled bitterness, to have very short memories of things which have been said and done in the past, which had better, as far as may be, be forgotten; while, on the other hand, we practise ourselves to take very long and far-sighted views in regard to the future and its issues. We shall offer continually from the depth of our hearts the Church's prayer, 'that the course of this world may be so peaceably ordered by' God's supreme and gracious 'governance,' that His 'Church may joyfully serve him in all godly quietness.' And, above all, remembering that there is that which concerns every one of us yet more deeply even than the safety and welfare of God's Church on earth, which Christ, our Lord and Master, hath taught us to make the foremost subject of our daily prayers; that there is that which comes nearer still to our individual concern—the present peace and eternal salvation of our own souls, in His everlasting kingdom of glory—we shall earnestly offer up the

¹ Neh. iv. 13, 14.

² Ibid., *vv.* 17, 18.

petition which the Church has put into our lips in this week's Collect, unto Him 'who alone can order the unruly wills and affections of sinful men,' that He will grant unto His people to love the things which He commandeth, and desire that which He doth promise, 'that so among the manifold and sundry changes of the world our hearts may surely there be fixed, where true joys are to be found ; through Jesus Christ our Lord, to whom, with the Father and the Holy Ghost, be all glory and dominion, world without end.'"

NOTE B.

The precise wording of the Commission, as regards its object, is to "inquire into the constitution and working of the Ecclesiastical Courts, as created or modified under the Reformation Statutes of the twenty-fourth or twenty-fifth years of King Henry the Eighth, and any subsequent Acts." The Archbishop, when he proposed to the Bishops, in the Upper House of Convocation, the application for the Commission, described its purposes in wide and comprehensive terms. His Grace said, "I think we are taking the wisest step by praying her Majesty to have *the whole question thoroughly examined*. I suppose it right that I should say, though I am addressing a body of Bishops of the Province of Canterbury, that we have had during the previous week a meeting of the Bishops of both Provinces. Unfortunately, the Primate of the Northern Province is, at present, out of England, and, therefore, he has not had an opportunity of freely discussing this question with us, and is enabled only to look at it from a distance, and not to take part in our discussions. But the Bishops of our Church who assembled here—twenty-six were assembled in this room yesterday,—without a dissentient voice, agreed that it was a wise course which was suggested to us—namely, that I should be requested to move in the House of Lords for a Royal Commission. . . . We are none of us anxious to be lords over God's heritage ; we are always anxious to have the assistance of our Presbyters, and of the Laity ; and I hope and believe that, by the blessing of God, we shall not be found unable rightly to discharge the duties that are committed to us. We ask for a Royal Commission in order that information, which it is almost impossible for us to get in any other way, may be obtained ; *and it is not our wish that the question should in any degree be shelved*. On the contrary, we wish to be able to have at our command *all possible information which can be elicited*, in order that we may study it, so as to be able

to pass a measure of usefulness to the Church, in such manner as to hand it down in full vigour to those who will come after us" (*Guardian*, February 16, p. 246, col. 1).

The precise wording of the Resolution moved by the Bishop of Peterborough in the Upper House (Thursday, February 10), and which was unanimously adopted, was as follows:—

"Whereas this House has received a Report from the Lower House on the Relations between Church and State, and also a Report on Clergy Discipline; and whereas many members of the Church have from time to time expressed their strong dissatisfaction with the present constitution of the Courts Ecclesiastical; and whereas the laws relating to Clergy discipline are in many respects in need of amendment; this House requests his Grace the President to pray her Majesty to issue a Royal Commission of inquiry into the said laws, and the constitution of the said Courts, with a view to *the full statement and consideration of all objections, and to the reform of whatever may be shown to be amiss.*"

NOTE C.

In these cases of diversity of opinion and interpretation, I said, "both parties alike, if they be what the same Preface calls 'sober, peaceable, and truly conscientious sons of the Church of England,' must be prepared to defer to the lawful authority; and to allow it, by its 'discretion, to take order for the quieting and appeasing' of such like doubt and diversity." Under a strong conviction that in the faithful observance of this rule of the Prayer Book was to be found the only effectual cure for the evils under which we were suffering, I ventured to say, "There is the better hope of remedy and recovery, if we are able to discern the character of the disease: if there were 'no balm in Gilead,' 'no physician there,' that had been neglected and thought lightly of, then there were less reason to look for 'the health of the daughter of our people' to be 'recovered' (Jer. viii. 22), in the humble and faithful use of the means which HE hath provided who left us His Church in the earth, and left with her the gifts of His Spirit" (Charge, 1871, p. 17).

I should be almost ashamed to think how often I have, in the course of the last ten years, reverted to this rule of the Prayer Book, were it not for its manifest and practical importance. At my Visitation in April, 1874, speaking of the Court of Final Appeal, and a change then lately made in it, I took occasion to say

that, "bearing in mind what the holy Apostle's judgment was, with regard to bringing questions which affected the Christian brotherhood before the outer tribunals of the secular empire, I" could "not but think that the results of our experience commended to us more than ever, in the cause alike of truth and of peace, the rule of our own Church, embodied in our Prayer Book, concerning points upon which doubts arise, or diversities spring up, in the Church's ritual. Let me repeat," I went on to say, "though it were needlessly, words from the Preface to the Book of Common Prayer, which embody, as it seems to me, the more fully the more they are considered, the very principles of an Episcopal Church, and therein of Apostolical Christianity. According to our Church's just and reasonable statement, if I may recall it again to your minds, 'there is no remedy, but that of necessity there must be some rules;' and therefore 'certain rules are,' in her Book of Common Prayer, 'set forth,' 'few in number,' and 'plain and easy to be understood.' She is conscious, at the same time, that 'nothing can be so plainly set forth, but doubts may arise in the use and practice of the same;' and hence her provision that 'for the resolution of all' such 'doubts,' and, more than this, 'to appease all such diversity (if any arise),' recourse shall be had 'to the Bishop of the Diocese, who by his discretion shall take order for the quieting and appeasing of the same;' with the final proviso to guard all, 'that the same order be not contrary to anything contained in this Book of Common Prayer.' It is a rule implying paternal and filial relations between the Bishop and the Clergy and people of his Diocese; it gives him a certain 'discretion' within defined limits" (*Measures and Means of Unity in the Church at the Present Time*. A Charge delivered in April, 1874; pp. 26, 27).

I felt constrained to revert to the same subject when I was addressing the Clergy again the following year (in April, 1875). Looking back to the circumstances of the preceding spring, I desired to recall to mind what I had strongly felt as to "the danger of provoking legislation," "narrowing, too probably, the liberty which the faithful and sober-minded of the Church's sons, Clergy and Laity, had highly prized, and would never desire to abuse. Amidst these perils, it seemed to be more than ever necessary to have recourse, in the spirit of dutiful loyalty, to the Church's rule, laid down in the Preface to the Book of Common Prayer." "How sadly this rule had been lost sight of, and its provisions set at nought and nullified, when men declared that they individually had no 'doubt,' and were therefore at liberty to reject any reference to the Bishop—entirely forgetting, meanwhile, that the rule provided not less distinctly for the case where parties 'diversely

take anything'—I" had "thought it well," as I reminded my brethren of the Clergy "to notice on a former occasion, four years before; and the condition in which we" had "found ourselves in the preceding spring seemed," as I thought, "to make more urgent the duty of recurrence, before it was too late, to the Church's wise and well-considered rule" (Charge of April, 1875, pp. 16, 17).

In putting forth the Charge of May, 1877, I ventured, at the conclusion of the matter appended in the Notes, to say, "I have referred *once more*, in the foregoing Charge, to the rule embodied in the Preface to the Book of Common Prayer, in regard to doubtful or disputed points in the rubrics. And I cannot refrain from saying, with respect to the case recently decided by the Judicial Committee [the case of *Ridsdale v. Clifton*—looking at it from the point of view of that Preface, which speaks with full Synodical authority the mind of the Church of England—that supposing a person to have, himself, 'no doubt,' and to be never so confident of the correctness of his own interpretation of the Ornaments Rubric, he can scarcely refuse to recognize, in the Report of the Judicial Committee, as well as in the conflicting legal opinions which have been given on the subject, the fact that the rubric is 'diversely taken;' and therefore that it is a case in which the rule of the Church applies, of reference to the Bishop. However the Ornaments Rubric be interpreted, there can be no doubt, assuredly, as to the meaning of the direction, or of the benefit and blessing to the Church which would follow on the faithful and dutiful observance of her rule, in the mutual relations of her Bishops and Clergy" (Charge, May, 1877, pp. 79, 80).

I should have to apologize for having so often "harped" upon the same string, were it not that I have felt throughout deeply persuaded that it is the only one that can produce *harmony* in the Church. I feel bound to add that there has been nothing within my own Archdeaconry which made such enforcement necessary; but it was a *general* principle that was concerned, of supreme importance for the welfare of the Church.

NOTE D.

The course taken by the Ritual Commissioners, as seen in their minutes, in regard to the Ornaments Rubric, was traced out in a Note to a former Charge (of April, 1875), entitled, *Prospects of Peace for the Church in the Prayer Book and its Rules*, pp. 128, 129; which also gave the passage from Bishop Thirlwall's Charge

of 1872, in reference to this matter : “ ‘There is no reason,’ said his Lordship, ‘to regret that the Ornaments Rubric, though it has been the chief occasion of the whole agitation which it was the object of the Commission to quiet, was left untouched. The fact itself seems to show that it would have been hardly possible, even if the Commission could have come to an agreement on this point, to bring any action of the Legislature to bear upon it without risk of very inconvenient consequences.’ ”

NOTE E.

Handy-book of the Public Worship Regulation Act, 1874, etc., edited by William G. Brooke, M.A., Barrister-at-Law, pp. 41-45. Mr. Brooke prefaces the list by saying, “It may be well to state briefly, *without pretending to state exhaustively*, the points in relation to ceremonial on which the Ecclesiastical Courts have given an opinion.” Beside the list above specified, there are the “omissions from the prescribed order,” which “may be made the subject of representation, equally with alterations or additions.”

Since my Visitation, there have appeared in the *Guardian* (of May 18) extracts from the Charge delivered by the Lord Bishop of Carlisle at his recent triennial Visitation. In reference to the Ecclesiastical Courts Commission, I find the following passage, which I take the liberty of copying ; and I do it, if I may be allowed to say so, with great satisfaction. His Lordship observes—

“It seems to have been assumed by many of us, amongst other things—

“(1) That the Book of Common Prayer contains a complete directory upon all ritual points ;

“(2) That it is possible to arrive at the meaning of the directions through the medium of courts of law ;

“And (3) That when the Courts have given a decision upon any disputed points, all practical difficulty vanishes.

“These assumptions have all broken down, more or less completely ; and the difficulties arising from this result have been complicated by others connected with recent legislation, and with the history of the Public Worship Regulation Act. Hence we seem to have arrived at a point at which a review of the whole position has become desirable ; and I cannot but feel thankful that her Majesty has seen fit to order the issue of the Commission for which the Archbishop of Canterbury moved. In saying this I do not attempt to anticipate the conclusions of the Commissioners, or even

the line of inquiry which they may see fit to adopt ; but I feel confidence in their integrity, and their desire to heal the Church's wounds ; and I sincerely trust that their Report, whenever it appears, may be no occasion for party triumph, but may supply a basis upon which all parties may meet to whom the Church of England is dear. . . .

“Meanwhile,” his Lordship further observes, “the sitting of the Commissioners will, I trust, be accepted very generally as a time of truce, and so, in a certain sense, a time of peace. The Bishops have been prayed to be tolerant ; and I think there is no fear lest they should adopt an opposite line of conduct. Bishops have to deal with men of such different temperaments, and with deviations from what may seem to them strict Church order of such divers kinds, that they are compelled to be tolerant ; and if there be one plan more than another which, in my opinion, would lead to trouble and disaster, it is that which proposes a perfectly clear rule upon every point connected with public worship, and a compulsory conformity to this clear rule. Such a method of government I believe to be impossible ; and, if it were possible, I should deem it to be mischievous. Certain leading rules may be laid down, and those rules ought to be as clear as they can be made ; but the notion of settling everything in a manner which can give rise to no doubt and no difficulty is, I think, a mere delusion. What we want is some living authority, and a willingness to submit to that authority. There may be some reason, though I know not what it can be, why the Bishop should not be accepted as that authority within his own Diocese. This seems to be the intention set forth in the Preface to the Book of Common Prayer. I see no better way out of our difficulties ; but I speak with diffidence.”

If *Bishops* “speak with diffidence” on this subject, there is no reason why *Presbyters* should ; least of all, those to whom the Church has committed authority, subordinate and concurrent, in these matters, in the cause of due order and the Church's peace.

NOTE F.

With the Petition of the Lower House should be put side by side the Resolution adopted by the Upper House, on the motion of the Lord Bishop of Lincoln, on Friday, February 11 ; the Resolution having been amended in consultation with some of his Right Reverend Brethren.

“That this House, having taken into consideration the Petitions

and Memorials brought before it by the Lower House, is of opinion that litigation in matters of ritual is to be deprecated and deplored, and, if possible, to be avoided. It also declares that authority to settle differences in such matters is inherent in the Episcopal office, as witnessed by ancient practice, and as referred to in the Preface to the Book of Common Prayer. And while this House entertains the hope that the Clergy, as in duty bound, will, in conjunction with the Laity, support the legitimate exercise of this authority, it also expresses its confidence, that this authority will be exercised by the Bishops of this Province, in their respective Dioceses, with an earnest endeavour to compose such differences, without litigation, and at the same time to maintain order, decency, purity of doctrine, and edification in Divine worship."

In supporting the Resolution, the Bishop of Chichester said, "We have reason to be thankful that the *Reformandum* sent up to us breathes the very spirit of our Resolution; and in that unanimity of the two Houses I discern some prospect of a future peace."

There was happily no ground for the apprehension that the Resolution would disappoint the Lower House; or that they would wish for some statement, or at any rate some outline, of the amount of toleration the Bishops were prepared to give.

His Grace the President, in summing up, expressed that he desired, in the first place, to say that he was "very thankful for the tone which," he understood, had "pervaded the discussion in the Lower House, and which certainly showed itself," said his Grace, "in the Resolution sent up to us. We might naturally have expected a great deal of irritation. And I should not have been surprised, if those feelings had prevented that sort of amicable and kindly and Christian consideration of the matter which characterizes the proceedings of the Lower House of Convocation."

NOTE G.

In the present lack of men learned in Ecclesiastical Law, since the College of Advocates at Doctors' Commons has come to an end, the provisions of the Act of 1840, in regard to Assessors of the Bishop, may be regarded as an advantageous substitution for a Chancellor in every Diocese to be appointed by the Bishop. Under the provisions of the Public Worship Regulation Act, the party complained of and the party complaining are to state in writing, within one and twenty days, whether they are willing to submit to the

directions of the Bishop without appeal, and, if so, "the Bishop shall forthwith proceed to hear the matter of the representation *in such manner as he shall think fit*, and shall pronounce such judgment and issue such monition as he may think proper; and no appeal shall lie from such judgment or monition." There is no such security here, in regard to law, as the Bishop's Court, provided for by the Act of 1840, gave. It is true, as Mr. Brooke remarks, that the Act "does not *preclude* the assistance of an Assessor;" but, as has elsewhere been observed, "no such Assessor is required." And the proceeding, meanwhile, under this Act of Parliament, it is hardly necessary to observe, is something totally different, in its whole complexion and character, from the reference to the Bishop prescribed in the Preface to the Prayer Book.

It has been observed above that, as far as regards the action of the Bishop, when a representation has been made to him, there is no provision for any legal assistance to the Bishop when he hears the case "in such manner as he shall think fit," and pronounces judgment without appeal. It must be added, however, that there does exist under the Act a provision for obtaining a legal opinion, if the two parties "join in stating any questions arising in such proceedings in a special case, signed by a barrister-at-law, for the opinion of *the Judge*; the Judge, thereupon, "shall hear and determine the questions arising thereon, and any judgment of the Bishop shall be in conformity with such determination." But this "Judge" is the same person whom, if the parties are not willing to submit to the Bishop's direction, the Archbishop, to whom the representation is to be transmitted, will direct and require to hear the matter. Then (unless the parties shall both agree that the evidence shall be taken by a shorthand writer, and that a special case shall not be stated) the Judge shall state the facts proved before him in the form of a special case, and give his judgment accordingly. Upon every judgment of the Judge an appeal shall lie to her Majesty in Council; but how? For "the purpose of an appeal to her Majesty in Council under this Act, the special case settled by the Judge (or a copy of the shorthand writer's notes) shall be transmitted, and no fresh evidence shall be admitted upon appeal except by the permission of the tribunal hearing the appeal." The Judge, in fact, is the party making the appeal; so that throughout, from first to last, before the Bishop, before the Court of Appeal of the Province, and finally before the Judicial Committee of the Privy Council, there is *one* individual legal authority, and one only, concerned. This, assuredly, is a course of proceeding quite new to English law; it is quite a novel theory of "appeal."

With regard to the Report of the Commission on Ecclesiastical Law, of 1830, and the principles embodied in it, see Charge of 1877,

Note F, pp. 55-57; and with regard to the Act of 1840 and its history, vid. *ibid.*, pp. 59-62. In reference to this Act, the late Dean of the Arches Court, Sir Robert Phillimore, in the Preface to the volume of his *Principal Ecclesiastical Judgments delivered in the Court of Arches, 1867 to 1875*, says—

“The Statute which, during the time I was Judge of the Court of Arches, regulated the discipline of the Clergy, 3 and 4 Victoria, cap. 86, was passed in 1840, after a very severe conflict and much difference of opinion in the House of Lords.

“It effected very material alterations in the existing law. It destroyed all peculiar jurisdictions, under cover of which bad clergymen had sometimes sheltered themselves against the penalties due to their offences. *It gave to every Bishop the power of sitting with Assessors in his own Court*, or of sending the case to be tried at once in the Superior Court of the Province. It directed, in the former case, the previous issue of a Preliminary Commission, which was to report whether there was a *prima facie* case for further proceedings. It provided, moreover—and this provision was extremely wise, and has often worked very well—that the accused Clerk might admit before his Bishop that he was guilty of the offence charged against him; and his Bishop had then power to pass such a sentence as the law allowed, without the scandal of a public trial. . . .

“I have read statements,” Sir Robert Phillimore further says, “relating to procedure in the Arches Court, which could never have been made in the presence of any person really conversant with the facts, or, if made, would have been immediately contradicted. For instance, cases tried thirty years ago, under a system of law and procedure materially different, have been represented as illustrating the present state of the Ecclesiastical Courts, no mention whatever being made of the subsequent alteration, because such mention would at once show that the censure was inapplicable” (Preface, pp. vi., vii.).

NOTE H.

The distinct recognition and maintenance of the purely spiritual and ecclesiastical character of the Church's tribunals is important, not only in regard to the essential claims of the Church, but also in relation to the question of establishment or disestablishment, so much talked of nowadays. By virtue of establishment, the Church's Courts are recognized, and their action in spiritual matters

allowed. On the other hand, if these matters are left to be dealt with by a temporal Court, there is no longer an established Church acknowledged. And this is obviously the effect, if what was, in its origin and essence, the Church's Court becomes a State Court. Of course, it is natural enough for legislators, if they desire to frame a machine which is to combine temporal penalties with purely spiritual authority, to put the temporal sword into a secularized Church's hands, and so think to arm it with the powers of the civil judicature. But the Church cannot possess these powers, and at the same time avail itself of the provisions which were grounded on an entirely distinct and opposite theory. The *significavit*, sent to the Court of Chancery, rested on the hypothesis that the Church Court had no temporal power; that all coercive jurisdiction was in the hands of the State; and that, if questions arose involving the exercise of the civil power, to the civil power the reference must be made.

If we look to the provisions of the Acts of Uniformity, we shall find this distinction maintained. In regard to the legal penalties, the last Act of Uniformity (13 and 14 Car. II., cap. 4), it is to be observed, simply appropriates to the newly revised Prayer Book the sanctions, whatever they were, of the preceding Act (1 Elizabeth, cap. 2). By section 24 it is enacted, "that the several good laws and statutes of this realm, which have been formerly made, and are now in force, for the uniformity of Prayer and administration of the Sacraments, within this realm of England and places aforesaid, shall stand in full force and strength to all intents and purposes whatsoever, for the establishing and confirming of the said Book, intituled, The Book of Common Prayer, etc., . . . hereinbefore mentioned to be joined and annexed to this Act; and shall be applied, practised, and put in use for the punishing of all offences contrary to the said laws, with relation to the Book aforesaid, and to no other."

We are thus referred back to the Act of Uniformity of Elizabeth; and there we read as follows (section 15):—

"And for the due execution hereof, the Queen's most excellent Majesty, the Lords temporal, and all the Commons, in this present Parliament assembled, do in God's name earnestly require and charge all the Archbishops, Bishops, and other Ordinaries, that they shall endeavour themselves, to the uttermost of their knowledges, that the due and true execution thereof may be had throughout their Dioceses and charges, as they will answer before God for such evils and plagues wherewith Almighty God may justly punish His people for neglecting this good and wholesome law."

It is a law enacted, essentially, by the Lay authority, giving the temporal sanction, and at the same time distinctly recognizing the

spiritual authorities of the Church, as those to whom was committed the administration and enforcement of the Church's laws. And, in order thereto, there follows this (section 16):—

“And for their authority in this behalf, be it further enacted by the authority aforesaid, that all and singular the said Archbishops, Bishops, and all other their officers exercising ecclesiastical jurisdiction, as well in place [places] exempt as not exempt, within their Dioceses, shall have full power and authority by this Act to reform, correct, and punish, by censures of the Church, all and singular persons which shall offend within any their jurisdictions or Dioceses, after the said Feast of the Nativity of St. John the Baptist next coming, after this Act and statute; any other law, statute, privilege, liberty, or provision heretofore made, had, or suffered, to the contrary notwithstanding.”

We have here the authoritative recognition, by the State, of the Church's spiritual tribunals, using purely spiritual weapons, proceeding “*by censures of the Church.*” But there followed, not less remarkably, this further provision, for action in Courts entirely distinct, viz. the temporal Courts of the realm. In section 17 we read—

“And it is ordained and enacted by the authority aforesaid, that all and every Justice of Oyer and Determiner, or Justice of Assize, shall have full power and authority, in every of their open and general sessions, to inquire, hear, and determine all and all manner of offences that shall be committed or done contrary to any article contained in this present Act, within the limits of the Commission to them directed, and to make process for the execution of the same, as they may do against any person being indicted before them of trespass, or lawfully convicted thereof.”

It is to be observed that, in the Thirty-fourth Article, offences against the common order of the Church are treated under two distinct aspects. It declares that “Whosoever through his private judgment, willingly and purposely, doth openly break the traditions and ceremonies of the Church, which be not repugnant to the Word of God, and be ordained and approved by common authority, ought to be rebuked openly, (that others may fear to do the like,) as he that *offendeth against the common order of the Church, and hurteth the authority of the Magistrate, and woundeth the consciences of the weak brethren.*” There is the aspect, on the one hand, of a spiritual offence committed against “the Church,” and its duly appointed order; and, on the other hand, there is the aspect of an offence against “the authority of the Magistrate”—distinct offences, and to be treated accordingly. To revert to the case of the Jews, under the temporal authority of the Roman Government; there might be an offence against the Jewish law, on the part of men

accused of not walking according to the tradition of the elders, or speaking blasphemous words against Moses and against the Law ; or there might be an offence against the authority of the civil magistrate, such as stirring up the people throughout Jewry, or forbidding to give tribute to Cæsar. But the great and crowning act of wrong was committed when these offences were mixed up together, and a compound complaint made out of them, and the Roman governor called upon to punish, with the penalties of the temporal law, what could only come plausibly under his authority by unrighteous confusion of charges of divers character, in one view spiritual, in another civil. The provisions of our own law, now before us, keep clear of this peril ; and still more remarkably, when we find this proviso added (section 18)—

“ Provided always, and be it enacted by the authority aforesaid, that all and every Archbishop and Bishop shall or may at all time and times, at his liberty and pleasure, join and associate himself, by virtue of this Act, to the Justices of Oyer and Determiner, or to the said Justices of Assize, at every of the said open and general sessions to be holden in any place within his Diocese, for and to the inquiry, hearing, and determining of the offences aforesaid.”

This provision has been, perhaps, in some degree overlooked by parties who occasionally refer, with a somewhat threatening significance, to the power given by this Act to bring an offending clergyman before the Justices of the Peace ; and there seems to be a perfect unconsciousness in many people that the penalties of the Act of Uniformity affect any but the Clergy. The clause preceding those above cited is as follows (section 14) :—

“ And that from and after the said Feast of the Nativity of St. John Baptist next coming, *all and every person and persons* inhabiting within this realm, or any other the Queen’s Majesty’s dominions, shall diligently and faithfully, having no lawful or reasonable excuse to be absent, endeavour themselves to resort to their parish church or chapel accustomed, or upon reasonable let thereof, to some usual place where common prayer and such service of God shall be used in such time of let, upon every Sunday, and other days ordained and used to be kept as holy days, and then and there to abide orderly and soberly during the time of the common prayer, preaching, or other service of God, there to be used and ministered ; upon pain of punishment *by the censures of the Church*, and also upon pain that every person so offending shall *forfeit* for every such offence twelve pence, to be levied by the Churchwardens of the parish where such offence shall be done, to the use of the poor of the same parish, on the *goods, lands, and tenements* of such offender, by way of distress.”

The Bishop of Oxford, in his recent Charge, observes, “ No one

at all acquainted with the history of Ecclesiastical Law can doubt that its theory has been inconsistent throughout with the notion of a Common Law right to employ its process in satisfaction of every private complainant's fancied wrong. Usurpations and errors there have been, indeed, in almost every age; but the spiritual jurisdiction has still borne on the face of it the spiritual character, to be traced originally to the plain words of our Lord and of His Apostles. Its proceedings have been instituted *pro salute animæ*. Its object has been to reform men's lives; to put sinners to open shame, and bring them to repentance; to cast out unworthy members from the Church, if no lighter censure would induce them to amend their lives. That this discipline should be set in motion by the *mandamus* of a temporal Court, in order to relieve a complainant, who alleged special damage to himself as the ground of his complaint, appeared to me to be alien to the whole idea of a spiritual Court, and at variance with its precedents and history from the dawn of Christianity. The 'apparent incongruity' of the interference was, indeed, frankly acknowledged by the Court of Queen's Bench itself. The judgments of the superior Courts made it plain that the interference was an incongruity to which the law, rightly interpreted, gave no support. . . .

"I do not forget," his Lordship went on to say to his Clergy, "while I congratulate you on the result of this suit, that the decision goes but a little way towards the solution of the great problem of enforcing, or reviving, the discipline of the Church. That discipline, in the true idea of it, is for the Laity quite as much as for the Clergy. Not in connection only with that primitive Episcopacy to which the Church of England adheres, but in Presbyterian bodies, and even to some extent in Congregationalist communities, censures against immorality, and condemnations of false doctrine, have been held to be part of the life of the Christian society. Amongst ourselves, Bishop Wilson's Episcopate in the Isle of Man furnishes the last example of a pure and effective administration of discipline. Shadows, indeed, of such a system remained in England within living memory; but the absolute immunity of the rich, and the entire separation of the disciplinary Courts from the religious sentiment of the Church, deprived them of all value in the eyes of those who wished well to the Church in her true spiritual work. When it is the mind of the members of the Church in general to 'withdraw from every brother that walketh disorderly,' and to 'put away from themselves (all) wicked persons,' that mind may be expressed, and reduced to practice, by the sentence of Church Courts. Discipline which has no echo in the thoughts and feelings of the Christian community—even if it were possible to maintain it in full efficiency—would be

little worth. Meantime," as his Lordship adds significantly, "the problem of constructing a system for the correction of Clerks, which is to be criticized by Laymen who repudiate all discipline for themselves, is one of exceeding difficulty."

"The Court of Arches," says the learned Judge who for eight years, at the earnest request of Archbishop Longley, and, for some time, with hardly any emolument, filled the office of Judge, "has great powers and privileges of jurisdiction. It is the only Ecclesiastical Court which has the power to pass sentence of deprivation. It is practically the Court in which the Archbishop sits when exercising jurisdiction over a suffragan Bishop. It is the Court of Appeal from all the Diocesan Courts of the Province of Canterbury. Moreover, recent decision," as he describes it, writing in 1876, "of the Judicial Committee of the Privy Council has decided that it is bound to take cognizance, in the *first instance* and without the advantage which the Appellate Court enjoys of the previous sentence of a competent Court, of every case which the Bishop of a Diocese may send, by what are called *Letters of Request*, to be tried before it" (*Principal Ecclesiastical Judgments delivered in the Court of Arches, 1867 to 1875*, by the Right Hon. Sir Robert Phillimore, D.C.L., Preface, p. v.).

"The extraordinary powers possessed by the Dean of the Arches," I have elsewhere observed, "make it, it must be evident, a very important question in what precise relation any newly appointed Judge, exercising these powers, stands, by virtue of the mode of his appointment, to the spiritual power or to the temporal" (Charge, 1877, p. 79).

The language used by Oughton, a high authority, respecting the office of the Dean of the Arches and Official Principal of the Archbishop, must be carefully borne in mind. He tells us (cf. *ibid.*, p. 78) that "the Official Principal of the Archbishop is, in regard to jurisdiction, on an equality (*æquiparatur*) with the Archbishop himself; for the Official and the Bishop are said to have the *same dignity*, and the same Court (*idem auditorium*); and that in the judicial forum the Official of the Archbishop is equal with the Archbishop himself; and the Official Principal has the same consistory with the Archbishop; and is sometimes said to be the Ordinary of the Bishops (*episcoporum ordinarium*)." (See Phillimore's *Ecclesiastical Law*, p. 1205.)

By the provisions of the Public Worship Regulation Act, the new Judge, to be appointed under that Act, was to have right of succession to the offices of Dean of the Arches and Official Principal of the Archbishop of Canterbury, and Judge of the Chancery Court of York; which offices, it was well known at the

time, were both about to be vacated. But it might have been thought that there was nothing to hinder the new Judge, whenever those offices became vacant, from qualifying himself as previous Judges had done, in conformity with the rules and requirements of Ecclesiastical Law. But, it would seem, the new Judge failed to comply with any such rules. "It is understood that his non-compliance was deliberate, not accidental; he could not defer," so it is said, "to the provisions of the Canon without implying that the Statute was insufficient to make him what he claims to be."¹ He thought, it is supposed, that he should mar his Parliamentary title to the seat which he was to occupy, if he recognized any derivation of its authority save from the Act of Parliament and the State Legislature. Accordingly, when he took his seat there, it might truly be said, "It is certain that, speaking ecclesiastically and morally, he represents a very different kind of authority from that of the Judges who have heretofore filled that venerable chair."² The former head of the Archiepiscopal Court was gone; and, now—

"What seemed a *head*
The *likeness* of a *kingly crown* had on."

By the 127th Canon, this was "The Quality and Oath of Judges:" "No man shall hereafter be admitted a Chancellor, Commissary, or Official, to exercise any ecclesiastical jurisdiction, except he be of the full age of six and twenty years at the least, and one that is learned in the Civil and Ecclesiastical Laws, and is at the least a Master of Arts or Bachelor of Laws, and is reasonably well practised in the course thereof, as likewise well affected, and zealously bent to religion, touching whose life and manners no evil example is had; and except, before he enter into or execute any such office, he shall take the oath of the King's supremacy in the presence of the Bishop, or in the open Court; and shall subscribe to the Articles of Religion, agreed upon in the Convocation, in the year one thousand five hundred sixty and two; and shall also swear that he will, to the uttermost of his understanding, deal uprightly and justly in his office, without respect or favour or reward; the said oaths and subscription to be recorded by a Registrar then present. And likewise all Chancellors, Commissaries, Officials, Registrars, and all others that do now possess or execute any places of ecclesiastical jurisdiction or service, shall, before Christmas next, in the presence of the Archbishop or

¹ Liddon's *Thoughts on Present Church Troubles*, 1881, Preface, p. xvii.

² *Ibid.*, p. xvi.

Bishop, or in open Court, under whom or where they execute their offices, take the same oaths and subscribe as before is said ; or, upon refusal so to do, shall be suspended from the execution of their offices, until they shall take the said oaths and subscribe as aforesaid."

These regulations, carrying with them the Synodical authority of the Convocation of the Province of Canterbury, were, assuredly, right and wise ; excellently fitted to prevent unworthy appointments, made under the undue influence of favour or affection, and to secure for the Church faithful and efficient men to hold office in her Courts of judgment. There is not one of these requirements which is inapplicable to the present time, even under the altered circumstances of the Civil Law Bar. The Judge is to be "one that is learned in the Civil and Ecclesiastical Laws, and is at the least a Master of Arts, or Bachelor of Laws, and is reasonably well practised in the course thereof," *i.e.* "of the law," as the Canon very reasonably says ; it does not say, "in the practice of the Ecclesiastical Courts ;" so that not even the destruction of the College of Advocates involves any difficulty in the observance of the Canon. But the whole ordinance of the Church's Canon has been now set aside, ignored, or disregarded : the new Judge is, by the Act, required simply to be "a member of the Church of England ;" which declaration, it has been truly enough said, "may mean no more than that he has not formally associated himself with some other religious body. It does not necessarily mean, in its modern acceptation, that he is a communicant, or even that he believes the Nicene Creed ; it is a declaration which is, in practice, consistent with repudiation of almost everything that 'a Christian ought to know and believe to his soul's health.'"¹

The essential change that had passed over the Court of Arches, under the operation of the Public Worship Regulation Act, came to the knowledge of Churchmen generally when certain Returns were moved for in the two Houses of Parliament. In the House of Lords, the Lord Foxford (the Earl of Limerick) moved, February 22, 1877, for "Copies of the Patents or Instruments of Appointment of Doctor Lushington, Sir Robert Phillimore, and Lord Penzance, as Official Principal of the Arches Court of Canterbury and Judge of the Provincial Courts of Canterbury and York, under the Public Worship Regulation Act, 1874, respectively." In the House of Commons, May 11, 1877, Mr. Hubbard moved for a like Return, and also for "Copy of Patents, or Instruments of Appointment of the Worshipful Granville Harcourt Vernon, as Official Principal of the Chancery Court of York." It appeared from

¹ Liddon, *Thoughts, sup. cit.*, pp. xviii., xix.

these Returns, that, heretofore, the requirements of the Church's Canons had been duly and strictly observed. When Dr. Lushington was appointed, on a certain day in July, 1858, "before the Most Reverend Father in God, John Bird, by Divine Providence Lord Archbishop of Canterbury, Primate of all England, and Metropolitan, at his Palace at Lambeth, in the County of Surrey, in the presence of the subscribed Notary Public and Actuary assumed," "appeared personally the said Right Honourable Stephen Lushington, Doctor of Laws; and the said Most Reverend Father in God . . . did then name and constitute the said Right Honourable Stephen Lushington to be Official Principal of the said Arches Court of Canterbury. . . ." The said Stephen Lushington, we learn, after taking the oaths of allegiance and supremacy, did "further make oath of the Holy Evangelists in the following words:—'I, Stephen Lushington, Doctor of Laws, do swear that I will, to the utmost of my understanding, deal uprightly and justly in the office of Official Principal of the Arches Court of Canterbury, without respect, or favour, or reward; as is enjoined in the 127th chapter of the Constitutions or Canons Ecclesiastical, treated and concluded upon in the Synod begun at London, in the year of our Lord one thousand six hundred and three, and afterwards approved of by Royal authority.' And the said Stephen Lushington did also subscribe his name to the Articles of Religion agreed on by the Archbishops, Bishops, and Clergy of both Provinces, in Convocation at London, in the year one thousand five hundred and sixty-two; and voluntarily declared his consent to the same as agreeable to the Word of God; that being done, the said Most Reverend Father in God, John Bird, Archbishop of Canterbury, did admit the said Stephen Lushington to the office of Official Principal of the Arches Court of Canterbury; and did sign, seal, and deliver into his hands a commission or patent for the office. Which I attest, (signed) F. H. Dyke, Notary Public and Actuary aforesaid."

The Letters Patent, bearing date July 2, 1858, ran thus—

"John Bird, by Divine Providence Lord Archbishop of Canterbury, Primate of all England, and Metropolitan, to our beloved in Christ, the Right Honourable Stephen Lushington, Doctor of Laws, health and grace;—We, trusting in your sound doctrine, good morals, piety of conscience, and in your special fidelity, circumspection, and industry, do, for us and our successors Archbishops of Canterbury, give and grant, and by these presents confirm, to you, during the term of your natural life, the office of Principal of the Arches Court of Canterbury, now vacant, with all and singular the fees, etc. . . . And . . . that you may the better know how and in what manner you are to behave yourself in the

exercise of the said office according to what is from law and custom to be known, we grant, enjoin, and commit, etc. . . . by the tenor of the words following, to wit, etc. We do, for ourselves and our successors, give and grant to you, the said Stephen Lushington, our power and authority legally to inflict any ecclesiastical censures which occur, as also of surrogating, deputing, and constituting any other person or persons in your place and stead ; he or they being approved of by us and our successors, for the performance of all and singular the premises. And we do, for ourselves and our successors, by these presents, ordain, appoint, and constitute you, the said Stephen Lushington, Doctor of Laws, Official Principal of the Arches Court of Canterbury during the time of your natural life as aforesaid. In testimony thereof we have hereunto caused our Archiepiscopal seal to be put."

"And we, the Dean and Chapter of the Cathedral and Metropolitan [Metropolitical] Church of Christ, Canterbury, do by these presents, so far as in us lies, ratify and approve, and by our authority confirm, the foregoing patent or grant, etc. . . . and all things contained and specified in the writing or patent hereunto annexed, . . . so far as we may, we do by our authority ratify and confirm by these presents. In witness thereof we have hereunto set our common seal. Dated in the Chapter House of us, the said Dean and Chapter, the sixth of August in the year of our Lord one thousand eight hundred and fifty-eight."

Here was the solemn delegation, by personal act, of authority given by the Spiritual Ruler of the Province to a Commissary Judge, who was to represent the Archbishop himself in his Court ; appointed in strict conformity with the Church's Canons, and exercising his office in accordance with them ; administering Ecclesiastical Law, with purely spiritual penalties, "the censures of the Church." There was the full setting forth of the qualifications which he was known, by the person appointing him, to possess for the office, and the expression of that full confidence in him which warranted the committing to him so high a trust.

The same forms, substantially, were followed in the appointment of Sir Robert Phillimore by Archbishop Longley, August 1, 1867 ; with the like confirmation by the Dean and Chapter of Canterbury, September 17, 1867.

But, in the case of the last appointment, all was changed. There was a document, signed by the two Archbishops, in the presence of their Secretaries, respectively, addressed, "To all to whom these presents shall come ;"—rehearsing the provisions of the Public Worship Regulation Act—"Whereas, by an Act made and passed, etc. . . . And whereas we are desirous of appointing the Right Honourable Sir James Plaisted, Baron Penzance, formerly a Baron

of the Court of Exchequer, and afterwards Judge of her Majesty's Court of Probate, and Judge Ordinary of the Court for Divorce and Matrimonial Causes, and a member of the Church of England, to be the said Judge, etc. . . . Now know ye that we, in pursuance of such desire, and in exercise of the power and authority to us given by the said Act as hereinbefore mentioned, and of every or any other power enabling us in this behalf, do, by these presents, with the approval of her Majesty (which approval is intended to be signified under her Sign Manual), appoint the said Right Honourable Sir James Plaisted, Baron Penzance, to be, during good behaviour, the Judge of the Provincial Courts of Canterbury and York for the purposes of the said Act."

Then follows the "Warrant signifying her Majesty's approval of the appointment," etc.

The Letters of the Archbishop bore date October 28, 1874; the Royal Warrant, November 14, 1874. On the 20th of October, 1875, as appears from the same Return, Sir Robert Phillimore resigned his office; "and accordingly Baron Penzance became Official Principal of the Arches Court of Canterbury, and the proceedings therein were continued before him." And "on the 30th of October, the resignation of the office at York took place; and accordingly Baron Penzance also became Official Principal or Auditor of the Chancery Court of York, and the proceedings therein were continued before him."

In this case we have simply a declaration made by each of the Archbishops, in the presence of his Secretary, that he has fulfilled his part in the carrying out of the provisions of an Act of Parliament, subject to the approval of the Crown. There has been, however, a further Return moved for in the House of Commons by Mr. Hubbard, May 16, 1878, viz. "Copy of Letters Patent or other Instruments whereby the Archbishop of Canterbury or the Archbishop of York has conferred upon Lord Penzance any Appointment, Powers, or Profits, subsequently to the resignation of the offices of Official Principal of the Arches Court of Canterbury by the Right Honourable Sir Robert Joseph Phillimore, and of Official Principal of the Chancery Court of York by the Worshipful Granville Harcourt." The Return made (May 31, 1878) exhibited "Letters Patent assigning an additional Share of the Fees receivable in the Faculty Office to the Master of the Faculties (in consequence of the vacancy in the office of Registrar of the Faculties, occasioned by the death of the late Viscount Canterbury, on the 24th of June, 1877), and the Ratification and Confirmation of the Right Honourable James Plaisted, Baron Penzance, M.A., in the said office of Master of the Faculties, and also in the office of Official Principal of the Arches Court of

Canterbury." These Letters Patent, granted to Baron Penzance, bearing date March 23, 1878, rehearse the appointment under the Act of 1874, and the subsequent vacancy, and also the desire to augment the share of fees payable to the Master of the Faculties; and they go on to "ratify and confirm the exercise of the said offices," by Baron Penzance, in terms taken from the old form of appointment; and also, as in the same form, the Archbishops' "power and authority legally to inflict any ecclesiastical censures whatsoever."

On the same day, "appeared personally," as before, the said Judge, who having produced his Warrant of October 28 and November 14, 1874, etc., "the said Right Honourable and Most Reverend Father, the Lord Archbishop of Canterbury, by virtue of all and singular the Archiepiscopal powers and authorities vested in him, did then ratify and confirm the said James Plaisted, Baron Penzance, Master of Arts, in and to the place of Official Principal," etc.

In these Letters Patent the grantee is described as a "Master of Arts"—so far, apparently, in conformity with the Canon; and there is reference made, significantly, to "all and singular the Archiepiscopal powers and authorities vested in" the grantor: but there was no signing of the Articles, no oaths taken, no promise given, no mention of any personal qualifications; with no allusion meanwhile to the Court of Divorce, but only to the "former" office of Baron of the Court of Exchequer, and membership of the Church of England, which the Act of Parliament had required; there was no setting right—as, indeed, there could not be—of the original wrong done to the Church of England, its ancient Courts and Ecclesiastical Laws.

The reply made, meanwhile, by the Archbishop of York, stated that no Letters Patent or other instrument had been issued by him since the resignation of Mr. Granville Vernon, "no occasion for the same having arisen." "It is considered," said his Grace to the Home Secretary, "that the appointment made by the Archbishops conjointly, after the passing of the Public Worship Regulation Act, had the effect of conveying to Lord Penzance, on the vacancy occurring, the power conveyed to the Official Principal by the former Patents."

It appears, by the "deed poll or instrument in writing," of October 28, 1874, that, when the two Archbishops declared themselves "desirous of appointing" the person named therein to the Judgeship, he had "agreed, subject to the consent of her Majesty, to undertake such office;" and so, in appointing him, "with the approval of her Majesty—which approval," it was declared, "is intended to be signified under her Sign Manual,"—the Arch-

bishops do not stand committed to any personal opinion, as in former appointments, in regard to "sound doctrine, good morals, piety of conscience," or "special fidelity, circumspection, and industry." On the face of it, matters had been arranged with the Judge, by the Government of the day, doubtless for what were thought good and sufficient reasons them moving; specially in regard to the remuneration required, which there was difficulty in finding, and which the pension of an ex-Judge of the Divorce Court would supply. With the precedent which has been unhappily set, it is impossible not to see that, unless something is done in consequence of the present Commission (presuming the opinion of lawyers, referred to in the foregoing Charge, is correct), it is too certain that the one legal officer to whom the rights and privileges—nay, rather the duties and responsibilities—of the Church of England will be committed, will be simply one who is professedly "a member of the Church of England," and whom the Government of the time being is prepared to recommend to the favour of the Crown.

It has been pleaded by high authorities, that there is a great advantage in the same person being Judge of the Courts of Appeal of the two Provinces. Upon which it must be observed, that it is one thing to have the same person Judge in the two Courts, and a very proper thing, if he be the fittest person that can be found; it is quite another thing to hamper and fetter the appointment with the requirement that the two Archbishops shall agree in the choice of their legal representative; and that he must be a person whose appointment the Crown—*i.e.* the Minister of the day—will sanction and confirm; and with the further prospect that, if the two Primates cannot agree within six months, the Crown will step in and appoint for them. When Potter was Primate of Canterbury, Hoadley might have been Primate of York. What sort of agreement would there have been between them, as to the views and opinions of the Judge whom they would have been compelled by the Public Worship Regulation Act to agree upon? Or what would have been the fate of the Arches Court amidst the conflicts, in Queen Anne's days, between the Whigs and Tories, and the changes of Ministry in that reign—even with a Queen on the throne who, personally, had the interests of the Church at heart, and consulted its spiritual heads?

There is one argument which must be noticed here, as having, apparently, found favour in the proceedings of the temporal Court. It was argued that the Canons had been ruled to be not binding on the Laity, and therefore not upon the Judge of the Arches Court, being a Layman; and consequently, that it was unimportant, in regard to his appointment, whether he had conformed to the Canons or not. Not to go into the question of the relation of the

Laity generally to the Canons of the Church, duly confirmed by the Crown, it must be observed that the Canons of the Church are, primarily, the very code of the Ecclesiastical Courts: the articles inquired of, in every Visitation of Bishop and Archdeacon, have regard to certain Canons requiring this or that to be provided by the parish; and the Visitation Articles systematically refer to such Canons severally. To ignore the Canons of the Church, in relation to the Ecclesiastical Courts and their proceedings is, in fact, to call in question, or to refuse to recognize, the existence of any such Courts; in fact, to abolish them; and so, as has been said above, to countersign the theory of disestablishment. It is a perfectly intelligible theory; but it contains within it essentially a revolution.

Mr. Brooke's *Handybook of the Public Worship Regulation Act* surveys, with a certain legal calmness of well-satisfied complacency, the precise provisions and operation of the Act. His work was "meant, not as a technical, but as a popular treatise, the object being to render the Act intelligible to the non-professional reader." He describes the penalties as "culminating in deprivation *by a self-acting process*, once an inhibition is ordered by the Judge. Hitherto," he says, "in the absence of very aggravating circumstances, the Ecclesiastical Courts have been inclined to *suspend* rather than to *deprive*. The severer penalty of deprivation has rarely been exacted. . . . A great change, however, has now been introduced. . . . Under this Act, . . . after three years, deprivation *follows as a natural and inevitable* consequence." We may say, indeed, that, as Milton would have described it—

". . . that two-handed engine at the door
Stands ready to strike once, and strike no more."

"The penalties," Mr. Brooke observes, "are sufficiently severe and easy of application." But, it seems, they have been found by certain parties not sufficiently rapid in their action. There is the interval of three years before the final blow comes down. Hence the recent proceedings in the way of *significavit* to the Court of Chancery, and imprisonment in consequence. "The self-acting process," meanwhile, as has already been said elsewhere, "would seem to be an entire novelty in Ecclesiastical Law;" and, it may be added, I conceive, in temporal law also. At all events, it is a somewhat different sort of procedure which is contemplated in the Act of Uniformity of Elizabeth, tolerably strict and stringent as its provisions were. It is "ordained and enacted" there, that "if any person or persons whatsoever shall . . . declare or speak anything in the derogation, depraving, or despising of the same book [of Common Prayer], or of anything contained, or any part thereof; or shall by

open fact, deed, or by open threatenings, compel, or cause, or otherwise procure or maintain any parson, vicar, or other minister . . . to sing or say any common or open prayer, or to minister any sacrament, otherwise or in any other manner or form than is mentioned in the said book ; or that by any of the said means shall unlawfully interrupt or let any parson, vicar, or other minister . . . to sing or say common or open prayer, or to minister the sacraments or any of them, in such manner or form as is mentioned in the said book ; that then every such person, being thereof lawfully convicted in form aforesaid, shall forfeit to the queen our sovereign lady, her heirs and successors, for the first offence an hundred marks."

Then follows, in another clause, " And if any person or persons, being once convict of any such offence, *eftsoons* offend against any of the last-recited offences, and *shall in form aforesaid be thereof lawfully convict* ; that then the same person so offending and *convict* shall, for the second offence, forfeit to the queen our sovereign, her heirs and successors, *four* hundred marks.

" And if any person, after he in form aforesaid shall have been twice *convict*, etc., shall offend the third time, and be thereof in form aforesaid lawfully *convict*, that then every person so offending and *convict* shall, for his third offence, forfeit to our sovereign lady the queen all his goods and chattels, and shall suffer imprisonment during his life."

NOTE I.

In regard to one of the two points, referred to by the Archbishop, on which it was impossible to enter in the preceding Charge, viz. the highest Court of Appeal, I have desired to call attention to the proposals made in Bills brought by the spiritual heads of the Church into the House of Lords in successive years now long past, not so much in regard to the particular arrangements proposed in those Bills, as in reference to the question of amending the order of final appeals, and, particularly, by the formation of a special Court for the purpose, in place of the Judicial Committee of the Privy Council, as at present constituted. It is important also to bear in mind the fact that such proposals were thus made and carefully considered ; inasmuch as it has been very commonly supposed, that Churchmen were satisfied with the existing arrangements prior to certain decisions of the Judicial Committee, and, primarily, in the Gorham case. It has also been a general impression, that the question lay between the Judicial Committee on the

one hand, and an exclusively clerical tribunal on the other—which is a misapprehension of what was conceived to be included under the “spirituality.”

A word, however, must here be said in reference to the rule of former days, lately revived, concerning the Privy Council and the secrecy required of its members. It is due, meanwhile, to the memory of the Star Chamber, which is sometimes referred to in an obnoxious sense, to recall to mind that there was no secrecy in regard to the part which its individual members had taken. Certain published speeches of Archbishop Laud’s in the Star Chamber are, by themselves, sufficient to correct this mistake. And it may be observed also that in the High Court of Delegates there was no such secrecy. It was known precisely how every one voted. In a testamentary cause, which originated in the Consistorial Court at Chester, and sentence given which was affirmed by the Chancery Court of York, the High Court of Delegates, to whom an appeal was presented, in 1815, after five days’ argument, gave no judgment, the six judges delegates present being divided. “It was understood” that Mr. Justice Bayley, Dr. Arnold, and Dr. (Joseph) Phillimore were on one side; and Mr. Baron Wood, Mr. Justice Dallas, and Dr. Dodson on the other.¹ “A Commission of Adjuncts was granted, and the cause was again argued,” the arguments occupying eight days, with eight judges delegates present; four of those who sat before, with four added, viz. Mr. Baron Richards, Dr. Burnaby, Dr. Daubeny, and Dr. Gostling: and the Judges, “being equally divided, gave no judgment.” “A second Commission of Adjuncts issued. The cause was argued a third time,” on five days, before fourteen delegates, there having been added Mr. Justice Park, Mr. Justice Holroyd, Sir Christopher Robinson, Dr. Parson, Dr. Arnold, and Dr. Dodson; who, again, “being equally divided, gave no judgment.” “A third Commission of Adjuncts was then granted; the cause was argued a fourth time, on three days, the judges delegates, thirteen in number, Dr. Meyrick being one of them, reversed so much of the sentence of the Chancery Court of York as condemned certain parties in costs;” but in all other respects pronounced that the Judges of the Courts below, as well in the first as in the second instance, had proceeded rightly, justly, and lawfully, etc.”²

This one instance may suffice to show how it came to pass that the High Court of Delegates was abolished, in conformity with the advice of the Commission on Ecclesiastical Law, of 1830; its imperfection arose, it is important to observe, out of the very fact that

¹ Burn’s *Ecclesiastical Law*, edit. Phillimore, vol. i. p. 63.

² *Ibid.*, p. 63, a.

the questions were to so great an extent dealt with by Judges specially conversant with civil and ecclesiastical law. Hence arose the inconvenience that, after eminent Judges in the Ecclesiastical Courts had given sentence, leading civilians being retained as advocates on either side, the larger Court which was required was made up by the addition of names of inferior authority. But at every step, it will be observed, in connection with the point for which it is now referred to, there was no secrecy as to the view taken by each of the delegates.

In like manner, in the Gorham case, before the Judicial Committee, the judgment began with the statement, respecting this case of appeal, "It has been fully heard before us; and by the direction of her Majesty, the hearing was attended by my Lords, the Archbishops of Canterbury and York and the Bishop of London, who are members of her Majesty's Privy Council. We have the satisfaction of being authorized to state that the Most Reverend Prelates, the Archbishops of Canterbury and York, after perusing copies of our judgment, have expressed their approbation thereof. The Right Reverend the Lord Bishop of London does not concur therein." The judgment also concluded by saying, "His Honour the Vice-Chancellor Knight Bruce dissents from our judgment; but all the other members of the Judicial Committee who were present at the hearing of the case (those who are now present and Baron Parke, who is unavoidably absent on circuit), are unanimously agreed in opinion; and the judgment of their Lordships is that the doctrine held by Mr. Gorham is not contrary or repugnant to the declared doctrine of the Church of England as by law established; and that Mr. Gorham ought not, by reason of the doctrine held by him, to have been refused admission to the Vicarage of Brampford-Speke. We shall, therefore, humbly report to her Majesty that the sentence pronounced by the learned Judge ought to be reversed; and that it ought to be declared that the respondent, the Lord Bishop of Exeter, has not shown sufficient cause why he did not institute Mr. Gorham to the said vicarage. We shall humbly advise her Majesty to remit the cause with that declaration to the Arches Court of Canterbury, to the end that right and justice may there be done in this matter, pursuant to the said declaration."

Again, the judgment given seven years afterwards (1857), in the case of *Liddell v. Westerton* and *Liddell v. Beal*, ended by saying, "In the case of '*Gorham v. Bishop of Exeter*,' where a difference of opinion existed among the Prelates who attended at the hearing, it was thought proper publicly to announce such difference. In the present case it is satisfactory to their Lordships to be able to state that both his Grace the Archbishop of Canterbury and the

Lord Bishop of London concur in the judgment which has just been delivered."¹

The Appeal was heard before "the Lord Chancellor (Cranworth), Lord Wensleydale, Mr. Pemberton Leigh, Sir John Patteson, and Sir William H. Maule. Privy Councillors specially summoned: the Archbishop of Canterbury (Sumner), Bishop of London (Tait)."² Two members of the Committee, it may be observed, were the same as in the Gorham case.

In the cases of *Williams v. Bishop of Salisbury* and *Wilson v. Fendall* (February, 1864), the two Archbishops (Archbishops Longley and Thomson) and the Bishop of London (Tait) were members of the Committee, together with the Lord Chancellor (Westbury), Lord Cranworth, Lord Chelmsford, and Lord Kingsdown. The Lord Chancellor concluded the Report of the Committee by saying, "I am desired by the Archbishop of Canterbury and the Archbishop of York, to state that they do not concur in those parts of this judgment which relate to the seventh article of charge against Dr. Williams, and to the eighth article of charge against Mr. Wilson."³

"The form now commonly used, when an appeal has been decided by the Superior Court, is, That the cause be remitted to the Court below, to the end that right and justice may be there done."⁴ It is very commonly supposed that the judgment of the Judicial Committee is read, in full, before the Privy Council, and there adopted by the Queen in Council. But this, I believe, is a mistake. All that comes before the Privy Council is the bare Report made on the case by the Judicial Committee; the detailed judgment of the Judicial Committee being a statement of the view taken by the Committee, the platform on which the Report is laid.

The two Acts, passed in successive years of Henry VIII., and which are specified in the Commission lately granted—viz. the Acts 24 Henry VIII., cap. 12, and 25 Henry VIII., cap. 192—may be regarded as embodying within them the constitution, historically and legally, of the Ecclesiastical Courts of England, and the provision then to be made on recognized principles. With regard to the latter subject, the later of the two Acts represents that "the Clergy of this realm of England hath most humbly besought the King's Highness, that the constitutions and canons" then in force "may be committed to the examination and judgment of his Highness, and of two and thirty persons of the King's subjects,

¹ Brooke's *Six Judgments*, p. 76; Brodrick and Fremantle, p. 155.

² Brooke, p. 42.

³ *Ibid.*, p. 102.

⁴ *Ecclesiastical Cases*, etc., edited by Brodrick and Fremantle, Preface, p. xxvii.

whereof sixteen to be of the Upper and Nether House of the Parliament of the temporality, and the other sixteen to be of the Clergy of this realm ; and all the said two and thirty persons to be chosen and appointed by the King's Majesty ;" this enactment being "by authority of this present Parliament, according to the said submission and petition of the said Clergy." The same Statute provided for the appeal "for lack of justice, at or in any of the Courts of the Archbishops of this realm, or in any the King's dominions," "to the King's Majesty in the King's Court of Chancery ;" whereupon a Commission was, upon every such appeal, to be "directed, under the great seal, to such persons as shall be named by the King's Highness, his heirs or successors, like as in case of appeal from the Admiralty Court, to hear and definitively determine such appeals, and the causes concerning the same." This was what was commonly known as the Court of Delegates, which continued as the Supreme Court of Appeal till the transfer was made to the Privy Council (1832), and thence to the Judicial Committee (1833).

The two Statutes above specified, having been repealed by 1 and 2 Philip and Mary, cap. 8, were revived by the Act 1 Elizabeth, cap. 1, and, with them, four other Acts of the same year of Henry VIII. (25 Henry VIII., cap. 9 ; cap. 12 ; cap. 20 ; and cap. 21). Not so an Act of the year following (26 Henry VIII., cap. 1), entitled, "The King's Grace to be authorized Supreme Head." It has been incorrectly stated that this Act was revived by the Act 1 Elizabeth, cap. 1.¹ Its non-revival is sufficiently accounted for by the Queen's well-known repugnance to this title, however qualified by the words of the Statute, "the only supreme head *in earth*:" and the omission of this Act is the more remarkable when we find another Ecclesiastical Act of the same year of Henry VIII., revived by Elizabeth—an Act "for nomination of Suffragans, and consecration of them." The Act of Elizabeth did, indeed, authorize the Queen to assign Commissioners to exercise ecclesiastical jurisdiction ; and thus arose that great source of future trouble, the Court of High Commission, framed on lines entirely distinct from the established course of Ecclesiastical judicature, as recognized by the earlier Statutes, reflecting the constitutional principles of Church and State in England.

It is not difficult to understand, now, how it is that there are found so few instances, as has been often observed of late, of appeals, in regular course, from the Archbishops' Courts to the Delegates. Proceedings in matters concerning ritual went through the Court of High Commission ; and not unnaturally. Amidst the

¹ Stephens's *Collection of Statutes*, vol. i. p. 177.

prejudice against the Bishops' Courts, inherited from the reign of Mary, here was a Court, deriving its effectual authority from the Crown, with a large infusion of Laymen. There was no appeal against it ; because it was a Court of first instance, constituted by Statute, and with no appeal from it given in the Act which established it. The serious question which its proceedings involved, as stated by Bishop Stillingfleet, is, "Whether our ancient law doth give the King a power, by virtue of his ecclesiastical jurisdiction, to appoint Commissioners, by an extraordinary way of jurisdiction, to proceed in *primâ instantiâ*, against persons by ecclesiastical censures."¹

The Act 26 Henry VIII., cap. 1, it has been observed above, was not revived by Elizabeth ; and a Vicar-General like the Lord Cromwell never reappeared : but the Act of Elizabeth did authorize the Crown to appoint Commissioners to exercise "all manner of jurisdictions, privileges, and pre-eminences, in any wise touching or concerning any spiritual or ecclesiastical jurisdiction" within these realms, "and to visit, reform, redress, order, correct, and amend all such errors, heresies, schisms, abuses, offences, contempts, and enormities whatsoever, which by any manner of spiritual or ecclesiastical power, authority, or jurisdiction, can be or may lawfully be reformed, ordered, redressed, corrected, restrained, or amended, to the pleasure of Almighty God, the increase of virtue, and the conservation of the peace and unity of this realm."

"The High Commission Court which was created by virtue of this clause, being abolished by Statute 16 Car. I., cap. 11, the extent and exercise of that authority," says Stephens, "are now matters of mere speculation and curiosity ; but during the period that such Court existed, there were many and great contests between it and the Courts of Westminster Hall, concerning the extent of the jurisdiction assigned and limited by this Statute ; the Commissioners not confining themselves to such crimes as might properly be called enormous (heresy, schism, polygamy, incest, and recusancy), but taking cognizance of adultery, alimony, defamation, laying violent hands on a clerk, misbehaviour of clergymen in their functions, and the like ; the cognizance of which the Judges affirmed to belong of right to the standing Ecclesiastical Courts, and not to the enormities within the meaning of this Statute ; alleging further that the exercise of jurisdiction, in these and the like cases, would not only prejudice all the Bishops of England in their ecclesiastical jurisdiction, but would be also grievous to the subjects, who must

¹ *Ecclesiastical Cases*, pp. 2, 85, quoted by Stephens, vol. i. p. 357, note.

be drawn up out of all parts of the realm, when, before their own Diocesan, they might receive justice at their own doors. Much of this kind is to be met with in the reports of that time, particularly in my Lord Coke, who strenuously resisted the encroachments of the High Commission; and he and the other Judges restrained them, in many instances, by prohibitions." "The Letters Patents, or Commission," as Mr. Stephens observes further, "empowered the Commissioners to fine and imprison; which they accordingly practised in many cases; and the practice was allowed by the greater part of the Justices assembled at Serjeants' Inn to consider of it (Gibson's *Codex*, 45), with this limitation, that the fine ought to be reasonable, and the imprisonment only for a moderate time. But the Commission being in its nature ecclesiastical, and limited, by the express words of the Statute, to offences punishable by spiritual or ecclesiastical power; and it being found that divers, who were imprisoned in the reign of Queen Elizabeth, had been delivered by *habeas corpus*; and that, though fines had been imposed in that reign, none of them had been levied;—upon these considerations, and upon a full and mature examination of the several parts of the Act, it was resolved by all the Justices of the Common Pleas (9 Jac. I.), that this Statute did not warrant a commission to fine and imprison; which resolution, and the reasons for it, are contained in the 4th Institute, 324."

It may seem to some persons a strange thing to find the temporal Judges evincing this care and jealousy in behalf of the spiritual Courts and their distinctive claims. But they were practically alive to the difficulties which at once arose when the boundaries between the spiritual and the temporal were in any wise transgressed. They strongly felt what Lord Coke expressed where he says, "Certain it is that this kingdom hath been best governed, and peace and quiet preserved, when both parties, that is, when the Justices of the temporal Courts, and the Ecclesiastical Judges, have kept themselves within their proper jurisdiction, without encroaching or usurping one upon another; and where such encroachments or usurpations have been made, they have been the seeds of great trouble and inconvenience."¹

In concluding these brief and inadequate notes, I would take leave to add, that I do not offer apologies for referring to previous Charges: I should, in fact, feel it to be less excusable if I went again over ground which had been traversed before. The present

¹ 4 Inst. 321. See Burn, edit. Phillimore (1842), vol. ii. p. 40.

Charge may be said to be the following up, in some degree, *pro re natâ*, of discussions entered upon in former years, and in particular in a Charge (referred to above) delivered four years ago, having for its subject, *The Church in its Divine Constitution and Office, and in its Relations with the Civil Power.*

PRECINCTS, CANTERBURY,
July 15, 1881.

ERRATUM.

Page 41, line 10, *dele her.*



